

90-155

Supreme Court, U.S.

FILED

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JOSEPH F. SPANIOLO, JR.
CLERK

No.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1989

In re RICHARD MILLAN, Petitioner

PETITION FOR A WRIT OF MANDAMUS/
PROHIBITION TO THE UNITED STATES
DISTRICT COURT FOR THE CENTRAL DISTRICT
OF CALIFORNIA,
AND THE HONORABLE EDWARD RAFEEDIE, AND
THE HONORABLE WILLIAM J. REA, JUDGE OF
THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

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In Propria Persona

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QUESTIONS PRESENTED

1. Whether a litigant appearing in *Propria Persona* in the United States District Courts is entitled to the same Constitutional protections afforded to litigants represented by counsel.

2. Whether a litigant appearing in *Propria Persona* in the United States District Courts has a right to be protected from partial and biased judges, to have the right to a fair trial in front of an unprejudiced factfinder, and to have the law as it is written enforced.

3. Whether a litigant who has been the victim of fraud on the court continues to be bound by the final judgment rule before he or she may seek relief from the Courts of Appeal or the United States Supreme Court when the District Court refuses to act upon the complaints of misconduct by the adverse party.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CV-87-2283-WJR

PARTIES TO THE PROCEEDINGS

PARTIES

RICHARD MILLAN
Petitioner

Richard Millan
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v.

JUDGE WILLIAM J.
REA
Respondent

UNITED STATES
DISTRICT COURT
CENTRAL DISTRICT
OF CALIFORNIA
OFFICE OF THE CLERK
U.S. COURTHOUSE
Los Angeles, Ca 90012

JUDGE EDWARD
RAFEEDIE
Respondent

UNITED STATES
DISTRICT COURT
CENTRAL DISTRICT
OF CALIFORNIA
OFFICE OF THE CLERK
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OCTOBER TERM, 1989

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PETITION FOR A WRIT OF MANDAMUS/
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OF CALIFORNIA,
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THE HONORABLE WILLIAM J. REA, JUDGE OF
THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

I. BASIS FOR SUBJECT MATTER JURISDICTION

The All Writs Statute, 28 U.S.C. § 1651 (1982) provides that the Supreme Court and the Courts of Appeals may issue "all writs necessary or appropriate in aid of theirJurisdiction[s] and agreeable to the usages and principles of law." That Statute unquestionably gives the Supreme Court the power to issue the writ petitioner seeks.

This Petition for a Writ of Mandamus ("Petition") is one of those rare cases whereby the United States Supreme Court has a case presented to the Court that contains each and every one of the five point guidelines for the issuance of a Writ of Mandamus that the Ninth Circuit Court of Appeals enunciated in Bauman v. United States District Court, 557 F.2d 650 (9th Cir. 1977).

Mandamus is proper in this case in that petitioner will show that the District Court has used two standards of justice in this action: one standard for lawyers and one standard for parties appearing in propria persona.

Mandamus is proper in this case in that petitioner will show that the District Court has for two years refused to render a decision on a lawfully filed motion to disqualify counsel.

II. STATEMENT OF THE CASE

Petitioner, Richard Millan ("Millan") is a non-lawyer appearing in propria persona in this action. Millan, however, has written every document in the Court files submitted by Millan without the help of legal counsel.

This case is about crimes, well-planned and carried out crimes of

bankruptcy fraud, wire fraud, tax fraud, securities fraud and mail fraud. Crimes that these defendants were warned not to carry out and still they persisted.

This action was commenced on April 4, 1987, alleging eight causes of action under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), Title 18 U.S.C. §§ 1961-1965, with the predicate acts of violations of Title 18 U.S.C. § 1943 (Wire Fraud), 18 U.S.C. § 1941 (Mail Fraud) and Title 18 U.S.C. § 152 (Bankruptcy Fraud). The above counts were brought against the following defendants: Marsha Bennett ("Bennett"), Colleen Steinbaugh ("C. Steinbaugh"), and Fashion Embroidery Inc., ("Fashion") and former defendants and co-conspirators Murray Gardner ("M. Gardner"), Bonnie Gardner ("B. Gardner") and Richard Steinbaugh (CR. 1) have settled their part in this action.

Millan met Bennett in October of 1983, and married her on December 2, 1983. The marriage lasted 7 months because Millan would not participate in a planned fraud on the U.S. Bankruptcy Court as more clearly explained in Appendix G, pages A-31-A-56.

Defendant Marsha Bennett is a beautiful woman, a former Miss Laguna Beach, Miss Orange County and Miss California. Bennett had many business and other relationships with her stepfather Douglas Martin that she hid from Millan and the world. It was not until 1987 that some of these ventures collapsed and forced Bennett to bring some of those transactions with Martin to the light of day through documents filed by attorney Steven Lubell with the Los Angeles County Recorder's Office. (See Appendix BB, pages A-168-A-170 and C.R. 62, pages 58-60.) A further cloud on

the horizon was the fact that Bennett's mother Colleen Steinbaugh was in the process of obtaining a divorce from Richard Steinbaugh. The Steinbaughs faced an uncertain future because they were planning to file separate bankruptcy petitions. Further complicating the problems of Bennett and the Steinbaughs was the fact that the Steinbaughs owned 30,000 shares of a company called Fashion Embroidery Inc.

This stock represented their sole remaining asset. Bennett and the Steinbaughs, along with the other defendants in this case, concocted a plan to sell the 30,000 shares of stock and hide the sale or the stock from the United States Bankruptcy Court.

While searching for a buyer for the 30,000 shares of stock, Bennett ran into Millan, married him, and tried to enlist him in her fraud scheme.

That this enticement did not work is the subject of four of the RICO counts in the present action before the District Court.

On March 14, 1988, Millan filed a motion for leave to file his first amended complaint (CR: 33)

On April 19, 1988, Millan's motion for leave to file his first amended complaint was denied. (CR: 42)

On April 25, 1988, Millan filed a notice of appeal to the Ninth Circuit Court of Appeals (CR: 45)

On June 27, 1988, the Ninth Circuit Court of Appeals denied Millan's appeal on the grounds of "lack of jurisdiction." (See: Appendix A, page A-1-A-2.)

On June 13, 1988, Millan filed concurrent motions to recuse Judge Rea and to disqualify Lubell. (CR: 62)

On June 27, 1988, defendants filed their opposition to Millan's concurrent

motions to recuse Judge Rea and to disqualify Lubell. (CR: 65). (See: Appendix H, page A-57.)

On August 26, 1988 Judge Edward Rafeedie denied Millan's motion to recuse Judge Rea; however he did not rule on the concurrent motion to disqualify Lubell. (CR: 73). (See: Appendix C, pages A-6-A-8.)

On September 2, 1988 defendants Bennett & Steinbaugh filed a motion for summary judgment against Millan. (CR: 74)

On September 13, 1988, Millan filed his motion for summary judgment against Bennett and Steinbaugh. (CR: 89)

On October 17, 1988, Minute Order issued granting partial summary judgment to defendants Bennett & Steinbaugh. Court denies Millan his motion for summary judgment. (CR: 92)

On November 8, 1988 Millan filed a notice of appeal to the 9th Circuit Court of Appeals. (CR: 95)

On February 23, 1990, appeal dismissed for failure to comply with rules. (CR: 101) (See: Appendix F, page A-29-A-30.)

III. WHY THE WRIT SHOULD ISSUE

1. THE PARTY SEEKING THE WRIT HAD NO OTHER ADEQUATE MEANS, SUCH AS A DIRECT APPEAL, TO ATTAIN THE RELIEF HE OR SHE DESIRES.

Millan appealed to the Ninth Circuit Court of Appeals on April 25, 1988 from an order entered on April 21, 1988 by the District Court. Millan contended in that appeal to the Ninth Circuit Court of Appeals that the following misconduct by attorney Lubell had occurred. (See Appendix E, pages A-26-A-28.) As noted in Appendix E,

this Court can see that the Ninth Circuit Court of Appeals had every opportunity to convert this appeal into a writ of mandamus yet chose to deny the appeal on the grounds that there had been no final judgment in the case:

"This is not a final, appealable order under 28 U.S.C. §§ 1291, 1292 or the collateral order doctrine. Accordingly, this appeal is dismissed for lack of jurisdiction. Appellant's request for a stay is denied." (See: App. A, page A-1-2)

On November 8, 1988, Millan filed a Notice of Appeal to the Ninth Circuit from a minute order entered on October 17, 1988 by the District Court (C.R. 95), and Millan on December 5, 1988 filed a docketing statement with the Ninth Circuit Court of Appeals more clearly described in Appendix E, pages A-26-A-28 alleging many of the same charges against attorney Steven Lubell as had been filed in the first Ninth Circuit appeal. By the time that the

final order was issued by the District Court, the time for filing the docketing statement with the Ninth Circuit had passed. A further complication was that Millan for the last two years has not been able to obtain a final order on his motion to disqualify attorney Steven Lubell ("Lubell"). One further impediment to perfecting this appeal was that Millan had timely ordered all transcripts of the hearings on September 26, 1988 and October 17, 1988 from the court reporter. It was not until February 27, 1989 that Millan received copies of the transcripts; however, the critical portion of the morning session of the hearings on September 26, 1988 were never transcribed and have never been received by Millan to this day, June 11, 1990. By the time that Millan received the partial transcripts he was out of

time to comply with the Ninth Circuit Rules for processing his appeal.

During the period of April 1987 to December 1988, Millan acted with diligence as the court docket will show. The frustrations that came about by the events best described in this document and the chronology of the efforts by Millan to obtain an order from the district court on the disqualification of Lubell, (See App FF, pgs. A-235-242), prevented Millan from perfecting his appeal. Millan had been told by Judge Rea to return to Court when the appeal was finished and Millan was never able to perfect the appeal because of the circumstances related herein.

It is clear that the supervisory powers over the District Courts of the United States that is inherent in the United States Supreme Court is justifiably called upon by Millan to correct

this situation. The confusion that has been caused by the events noted in this document require this Honorable Court to step into this case in its supervisory capacity.

2. THE PETITIONER WILL BE DAMAGED OR PREJUDICED IN A WAY NOT CORRECTABLE ON APPEAL.

As early as 1824 the Supreme Court spoke of the requirements of Supreme Court intervention by Writ of Mandamus. Writing for the Court Chief Justice Marshall stated, in denying a writ of mandamus filed by an attorney who had been suspended from practice from an inferior court, that the Court was not inclined to intervene,

"unless it were in a case where the conduct of the Circuit or District Court was irregular, or was flagrantly improper." Ex parte Burr, 22 U.S. Wheat 529 (1824).

This instant action is replete with a persistent disregard for the federal rules, flagrant trial court error and

attorney misconduct that was brought to the attention of the District Court. However, the District Court refused to act on petitioner's complaints and abdicated its power and duties to the State Bar of California.

Defendant Bennett and attorney Lubell concealed the identity of the most important witness in this case and obtained an order denying an amendment to Millan's complaint and an order granting a partial summary judgment to defendants Bennett and Steinbaugh by the following misconduct.

a. Suppression of Evidence

Bennett and Lubell suppressed the new married name of Bennett in interrogatories (App. BB[C], pgs A-145-146, para 25) and in deposition (App BB[D], pg A-146, para 26) the true reasons for this suppression are fully explained in (App BB[E], pg A-147-149, paras 27-28)

(App BB[F], pg A-149-150, paras 29-30)

(App BB[G], pg A-150-154, para 31-34).

Bennett and Lubell further suppressed the evidence of a lawsuit filed by Lubell for Bennett in her new married name, in interrogatories (App. BB[I], pg A-154-156, para 36) and in deposition and by subpoena (App. BB[I], pg A-156, para 37), for the express reason of concealing the true married name of Bennett and concealing the identity and complicity of her new husband Uday Raj Sawhney. (App. BB[I], pgs A-157-158, para 38).

b. Perjury

Bennett committed perjury with the knowledge of counsel in interrogatories, (App BB[J], pg A-158-159, para 39). The true answers are clearly contained in (App BB[K], pgs A-160-162, para 40 1-5).

Bennett committed perjury and counsel suborned that perjury in deposi-

tion (App BB[Q], pg A-181-184, paras 22-24) the true answers are contained in (App. BB[Q], pgs A-184-185, para 24)

Bennett committed perjury and counsel suborned that perjury in deposition (App [R], pg A-185-186, para 25-26)

Bennett committed perjury and counsel suborned that perjury in sworn documents filed with the Court. (App. CC, pgs A-194-195, A-203-205, paras 8 and 14.) The truth of the statement by Bennett is found in (App. CC, pg A-203, para 14 [(3)][(4)] and at (App. CC, pg A-203, para 14 [(3)] (CR 88, pg 465-466) (CR 83, pg 389)(CR 83, pgs 406-407)(CR 83, pg. 437 [history])(CR 83, pg 461).

Bennett committed perjury and counsel suborned that perjury in sworn documents filed with the Court. (App. CC, pg A-200-203, para 12 and 13.) The true facts of Bennett's statement are more clearly found in (App. CC, pgs

A-201-203, paras 13[(6)][(7)][(8)];
(App. CC, pg A-206-207, para 15 [(6)]
[(7)][(8)][(10)], (CR 83 [(4)] and (App
CC, pg A-203, para 14 [(3)](CR 88 pg
465-466)(CR 83 pg. 389)(CR 83 pgs.
406-407)(CR 83 pg. 437 [history])(CR 83
pg. 461)

c. Concealment of Documents

Bennett and Lubell concealed the
following documents that were under
lawful subpoena. (App. BB[I], pgs.
A-156-158, para 37-38)(CR 62 pgs 41-45);
(App. BB[L], pgs. A-163-171, para 41-53)
(CR 83 pgs. 497-498) (CR 83 pg. 499) (CR
83 pg. 500).

d. Concealment of Witnesses

Bennett and Lubell concealed the
material witness Uday Raj Sawhney and
completely prejudiced Millan's case and
obtained a order denying Millan leave to

amend his complaint and an order granting a partial summary judgment against Millan based on the concealment. (App BB[C], pgs A-145-146, para 25) and in deposition (App BB[D], pg A-146, para 26) the true reasons for this suppression are fully explained in (App BB[E], pg A-147-149, para 27-28) (App BB[F], pg A-149-150, para 29-30) (App BB[G] pg A-150-154, para 31-34).

Bennett and Lubell further suppressed the evidence of a lawsuit filed by Lubell for Bennett in her new married name in interrogatories (App BB[I], pg A-154-156, para 36) and in deposition and subpoena (App BB[I], pgs A-156, para 37), for the express reason of concealing the true married name of Bennett and concealing the identity and complicity of her new husband Uday Raj Sawhney. (App BB[I], pgs A-157-158, para 38).

e. Concealment of Material Facts, See:

Appendix BB, Sec. [I], pgs. A-154-158, Sec. [Q], pgs. A-181-185, Appendix M, pgs. A-85-100.

f. Misrepresentation of Prior Court Proceedings, See: Appendix BB, Secs. [M], [N], [O], [P], pgs. A-171-181.

g. Misrepresentation of Cited Authority, See: Appendix AA, pgs. A-137-139.

h. Harassment of Opposing Party, See: Appendix Z, pgs. A-128-136, Appendix BB, Secs. [A], [B], [C], [D], pg. A-140-146.

i. Ex Parte Conversation with Law Clerk, See: Appendix M, pgs. A-85-100.

j. The misconduct in paragraphs 2(a) through (i) above violated the:

(a)(1) United States District Court Rules.

(a)(2) Rules of Professional Conduct, See: App N, pg. A-101-102, Appendix Q, pg. A-105-106, Appendix O, pg. A-103, Appendix P, pg. A-104, Appendix S, pg. A-111-112, paras.

(1), (2)(A), pgs. A-114-116, paras. 41-42, Appendix U, pg. A-120-121, Appendix V, pg. A-122.

(a)(3) ABA Model Rules, See: Appendix X, page A-124-125.

(a)(4) California Penal Code, §653F(a), See: App S, pg A-117, para 43.

(a)(5) California Business and Professions Code, §56128(a) and 6068(d), See: Appendix S, pgs. A-117-118, paras. 44-45, Appendix W, page A-123, Appendix Y, page A-126-127.

These acts of misconduct by Marsha Bennett and defense counsel Steven Lubell have completely prejudiced Millan's case and has led to denials of his motion to amend his complaint and has led to granting a partial summary judgment to these defendants. It has also been the basis for a denial of summary judgment to Millan. The misconduct of counsel and the misconduct of

defendants cannot be correctable on appeal because the damage has already been done.

3. THE DISTRICT COURT'S ORDER IS CLEARLY ERRONEOUS AS A MATTER OF LAW.

a. Millan's motion to disqualify attorney Steven Lubell was filed on June 13, 1988 (C.R. 62). However, as this Court can see, the District Court docket does not reflect the disqualification motion against attorney Steven Lubell in C.R. 62.

Millan calls the attention of this Court to C.R. 65 filed on June 27, 1988, whereby Lubell responds to Millan's disqualification motion. Millan further directs this Court's attention to the fact that as of this date July 10, 1990, the District Court has not acted upon Millan's lawfully filed motion to disqualify attorney Steven Lubell.

b. On August 26, 1988, the Honorable Edward Rafeedie, United States District Judge, denied Millan's motion to disqualify Judge Rea (C.R. 73). It will interest the Supreme Court to note that in the disqualification motion filed by Millan (C.R. 62, page 5, lines 12 through 22) that reads as follows:

"This Court and this Plaintiff have been the victims of a deliberate scheme and course of misconduct by defendant Marsha Bennett and her Attorney Steven Lubell to mislead this court into decisions that are extremely prejudicial and have done great harm to Plaintiff's case. This scheme has been so pervasive with perjury, fraud on the court, misrepresentation of the records of other cases presented to this Court, concealment of documents, events and people from Plaintiff and this Court and direct false testimony by attorney Steven Lubell before this Court, that adverse rulings have been made by this court on the basis of fraud."

This is a very damaging statement not only on the honesty, integrity and the professional responsibility of attorney Steven Lubell but Millan has

couched this in the strongest possible language. It is fair to say that any court in this country or any judge in this land had he even the faintest thought or hint that there was any misrepresentation in this paragraph by Millan, that judge would have come down upon Millan with the strongest possible Rule 11 sanctions. However, in the words of Judge Rafeedie:

"Defendants Marshal [sic] Bennett and Colleen Steinbaugh request that the Court impose sanctions on plaintiff pursuant to Federal Rules of Civil Procedure Rule 11. The Court does not find sanctions warranted." (Appendix C, page A-7.)

4. THE DISTRICT COURT'S ORDER IS AN OFT-REPEATED ERROR, OR MANIFESTS A PERSISTENT DISREGARD OF THE FEDERAL RULES.

a. It is common knowledge that judges and attorneys would rather that pro se litigants practice their law outside of the courtroom. It is further fair to say that pro se litigants are

not welcome within the confines of the judicial system. Perhaps no better example can Millan show this Honorable Court than a study done by Professor Brewer in an article entitled "Mandamus Power" in the Buffalo Law Review, Vol. 31, 1982 at 68-70. (App. I, pg A-58-61) on the filing of mandamus petitions. In a three-year study, Professor Brewer found that 40 of the petitions filed by pro se litigants were complaining of the District Court's failure to act.

It is Millan's contention that this manifestation of failure to act that was revealed in the study above and in this instant action is a violation of the due process clause, the equal protection clause and the equal access clause of the United States Constitution.

5. THE DISTRICT COURT'S ORDER RAISES NEW AND IMPORTANT PROBLEMS, OR ISSUES OF LAW OF FIRST IMPRESSION.

a. The Order by United States District Court Judge William J. Rea that Millan, a litigant acting in propria persona, take his complaints on attorney misconduct to the State Bar of California.

"Mr. Millan: "I have in many, many motions in front of this court asked this court to investigate the misconduct of Mr. Steven Lubell. Not only in----"

The Court: "You are going to have to take that to the State Bar. This court is not here to investigate attorneys in the way they practice law." (App. R, pg. A-107)

This order raises a completely new issue as to whether a United States District Court Judge has the power and authority to abdicate to any State Bar Association in the country the powers delegated to that court by the Congress and the Constitution of the United States and by so doing denies the equal protection of the law, equal access to the courts and due process of law as

guaranteed by the Constitution of the United States to persons coming before its bench.

Mandamus is proper in this case in that the Hon. Judge William J. Rea wrote an eloquent decision in Mercury Service Inc. v. Allied Bank of Texas, 117 F.R.D. 147, 156 (1987) (See: Appendix J, pgs A-62-82) that clearly outlines the duties of the court and is an excellent example of the two sets of justice that this Court uses in this case and in the Mercury case.

Mandamus is proper in this case in that the District Court has, for almost two years, refused to render a decision on a duly filed motion to disqualify counsel Steven Lubell in spite of numerous requests and promises by the clerks of the Court that a decision would be brought forth.

Mandamus is proper in this case because of the drastic nature of the proceedings and decisions of this District Court make the nature of the drastic remedy of mandamus embrace its use in this extra-ordinary situation.

Mandamus is proper in that the various circuits are divided in the manner of the imposition of sanctions for violations of Rule 11.

Mandamus is proper in this case as will be shown that motions brought by petitioner to the District Court were denied as the result of fraud and deceit of defendant Marsha Bennett and defense counsel Steven Lubell.

IV. AN ARGUMENT

1. WHETHER A LITIGANT APPEARING IN PROPRIA PERSONA IN THE UNITED STATES FEDERAL COURTS IS ENTITLED TO THE SAME CONSTITUTIONAL PROTECTIONS AFFORDED TO LITIGANTS REPRESENTED BY COUNSEL.

Pro Se Litigation

Access to courts in America is a Constitutional right. The First Amendment of the United States Constitution (See: Appendix K, page A-83) permits the people of this country to petition the government in order to redress grievances. U.S. Const. Amend. I. Included in the right to redress grievances is the right of access to the courts. Matter of N. C. Trading, 586 F.2d 221 (1978).

The right of access to the courts is coupled with a statutory right to conduct a case with or without an attorney:

"In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." 28 U.S.C. § 1654 (1988).

This statutory guarantee has existed since the First Congress Judiciary Act of 1789, § 35, 1 Stat. 73, 92 (1789).

In fact, the right to proceed pro se has risen to Constitutional importance. "The right to assistance of counsel and the correlative right to dispense with a lawyer's help are not legal formalisms. . . [T]he Constitution does not force a lawyer upon a defendant." Adams v. U.S. ex. rel. McCann, 317 U.S. 269, 279, 63 S.Ct. 236, 242, 87 L.Ed. 268, 276 (1942).

Courts have a continuing obligation to take into account a litigant's pro se status.

"Implicit in the right of self-representation is an obligation on the part of the Court to make reasonable allowances to protect pro se litigants from inadvertent forfeiture of important rights because of their lack of legal training." Traguth v. Zuck, 710 F.2d 90, 95 (2d Cir. 1983).

This duty to protect the pro se litigant triggers procedural protections including the right to amend a complaint (unless the complaint is clearly

futile). Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987), to provide the litigant with a notice of deficiencies in the complaint to ensure effective amendment, Eldridge v. Block, 832 F.2d 1132 (9th Cir. 1987), and to notify the litigant of the right to file counter-affidavits and other responsive materials, Roseboro v. Garrison, 528 F.2d 309, 310 (4th Cir. 1975).

In this instant action the District Court refused to allow Millan to file the first amended complaint.

At the time of the denial, the trial date had not been set, discovery had not closed and had not been completed. The District Court refused to consider the allegations of attorney misconduct brought to its attention by Millan and all evidence placed before it by Millan. The District Court further refused to investigate the allegations

of fraud that led to the denial of the motion to amend the complaint.

The motion to allow the filing of the amended complaint was denied on the basis that it would prejudice the defense although Mr. Lubell in open court stated that his clients would not be prejudiced and the other defense counsel had no objection to the filing of the amended complaint.

The District Court noted that Millan should have known about the other parties as of July 1985, even though Millan did not learn of them until he received documents from defendant Murray Gardner in January of 1988 and the events sought to be included in the amended complaints covered actions by defendants for the years of 1985 through 1987. The concealment of the true married name of defendant Bennett kept Millan from finding out the identity of

the most important material witness in this action, her new husband Uday Raj Sawhney. This material witness was an accountant that worked for Millan on a project Millan commissioned to find out the net worth of a company called Certified Tank Manufacturing Inc., a company owned by Bennett and offered for sale to Millan by Bennett. Sawhney was also hired by Bennett to audit the books and records of defendant Fashion Embroidery Inc. from July 1984 through 1987 dates that were after the date of July 25, 1984 that she told the Court in a sworn declaration that she had resigned as an officer and director of Fashion Embroidery Inc. (CR: 74, pages 40-47.)

During those years, Uday Raj Sawhney and Bennett had prepared false tax returns for Fashion Embroidery and had prepared false books of accounts, false financial information and false

credit information unbeknownst to Millan.

Sawhney states his knowledge very clearly in a letter written by him to Murray Gardner dated July 21, 1986.

"..Murray, I am available to help and as you notice I have not been quick with the bills. After-all who knows better than myself what you can or cannot pay?" (App. EE, pg A-233).

Attorney Steven Lubell kept Millan from this information. Millan did not even know that Bennett had married Sawhney until after January 1987.

Bennett could not have married Sawhney until 1986 since the marriage of Millan and Bennett had not ended until March of 1986. There was no possible way that this material witness could have been known to Millan in 1985 as Lubell claimed.

As soon as Millan had found out the true identity of Uday Raj Sawhney, the

material witness that Lubell concealed Millan moved to amend his complaint. Judge Rea denied the motion to amend.

A pro se litigant must adhere to applicable rules of procedure and technical law, Birl v. Estelle, 660 F.2d 592, 593 (5th Cir. 1981), but is not subject to "harsh application of technical rules." Targuth v. Zuck, 710 F.2d 90, 95 (2d Cir. 1983). "We are generally more solicitous of the rights of pro se litigants, particularly when technical jurisdiction requirements are involved." Borzeka v. Heckler, 739 F.2d 444, 447 N.2 (9th Cir. 1984).

In this instant action, Millan went to great lengths to outline the multiple predicate acts and multiple schemes of these defendants. Millan compiled an exhibit of documents of more than 500 pages, (CR: 88), and an Exhibit entitled "Rico Pattern and Continuity of

Predicate Acts" (CR:87 pages 27 through 47) (See: Appendix G, pgs A-31-56), Millan provided the Court with a flow chart exhibit entitled "Defendants History of Prior Schemes and Defunct Business Ventures" (CR:87, pages 48-53) Millan provided the Court with a complete itemized direct rebuttal to sworn declarations by Bennett and Steinbaugh (CR: 81, paras 3-31), all of the documents, declarations, rebuttals were all but ignored by the District Court. This compilation was accomplished from documents that Millan received in February 1988 from defendant Murray Gardner.

In general, courts must hold a pro se complaint,

"however inartfully pleaded" to "less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 596, 30 L.Ed. 2d 652 (1972) (per curiam). See also Estelle v. Gamble, 429

U.S. 97, 106, 97 S.Ct. 285, 292, 50
L.Ed 2d 251, 261 (1976).

The liberal construction given to
pro se papers is to insure that the
claims of the pro se litigant are given
"fair and meaningful consideration."
Madyan v. Thompson, 657 F.2d 868, 876
(7th Cir. 1981). Fair and meaningful
consideration is crucial to due process.
Indeed, fair play is the essence of due
process. Galven v. Press, 347 U.S. 522,
74 S.Ct. 737, 98 L.Ed. 911, rehearing
den'd. 348 U.S. 852, 75 S.Ct. 17, 99
L.Ed. 671 (1954). Because it is unclear
how far a trial court must go to assist
a pro se litigant,

"... the ultimate determination
of whether a pro se litigant has
received a fair and meaningful
consideration of his claims must be
made on a case by case basis."
Caruth v. Pinkney, 683 F.2d 1044,
1050 (7th Cir. 1982), cert. den'd
459 U.S. 1214, 103 S.Ct. 1212, 75
L.Ed. 2d 451 (1983).

Ultimately, the pro se litigant can expect free access to the courts and some assistance with procedural matters from the courts as courts give them their due process.

2. WHETHER A LITIGANT APPEARING IN PROPRIA PERSONA IN THE UNITED STATES FEDERAL COURTS HAS A RIGHT TO BE PROTECTED FROM PARTIAL AND BIASED JUDGES, TO HAVE THE RIGHT TO A FAIR TRIAL IN FRONT OF AN UNPREJUDICED FACTFINDER, AND TO HAVE THE LAW AS IT IS WRITTEN ENFORCED.

Impartial Tribunal

While a pro se litigant is entitled to a liberal reading of his or her papers, all litigants are entitled to an impartial and disinterested tribunal. The Due Process Clause of the Constitution (See: Appendix L, page A-84) requires adjudicative proceedings be neutral in order to prevent unjust or mistaken deprivations of life, liberty, or property, Mathews v. Eldridge, 424

U.S. 319, 96 S.Ct. 893, 47 L.Ed. 2d 18 (1976), and to promote dialogue and participation in the decision making process. Carey v. Piphus, 435 U.S. 247, 98 S.Ct. 1042, 55 L.Ed. 2d 252 (1978).

"At the same time, it preserves both the appearance and reality of fairness . . . by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him." Marshall v. Jerrico, Inc., 446 U.S. 238, 242, 100 S.Ct. 1610, 1613, 64 L.Ed. 2d 182, 189 (1980).

The right to be heard by an impartial tribunal is a statutory right. 28 U.S.C. §144 (1988) reads in part:

"Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter has pending a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding."

28 U.S.C. § 544 (1988) provides, in pertinent part:

"(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned; (b) He shall also disqualify himself in the following circumstances: (1) Where he has personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding . . ."

Finally, the Code of Judicial Conduct states that a judge shall disqualify himself in a proceeding where his impartiality might be questioned. Code of Judicial Conduct Canon 3(c)(1) (1988).

The goal of the self-initiating judicial disqualification statute (28 U.S.C. § 455) is not only to alleviate impartiality but also to foster the appearance of impartiality.

"Any question of a judge's impartiality threatens the purity of the judicial process and its institutions." Potashnick v. Port City Const. Co., 609 F.2d 1101, 1111 (5th Cir. 1980).

Because the judge has an obligation to be free of the appearance of impartiality, he must consider what is revealed to the public and the parties, using an objective standard. Id. The statute requires the judge to disqualify himself when a reasonable person, knowing all of the circumstances, would have doubts about the judge's impartiality. United States v. Winston, 613 F.2d 221, 222 (9th Cir. 1980).

In addition, the judge must recuse himself if he is biased or prejudiced. 28 U.S.C. § 455(b)(1). An alleged prejudice or bias requiring recusal

"must stem from an extrajudicial source and result in an opinion on the merits or some basis other than what the judge learned from his participation in the case." United States v. Grinnell, 384 U.S. 563, 583, 86 S.Ct. 1698, 1710, 16 L.Ed. 2d 778, 793 (1966).

Not only must a judge disqualify himself if he is biased, prejudiced, or

partial, he must recuse himself if he has off-the-record contact that might influence the outcome of the litigation.

Code of Judicial Conduct Canon 3(A)(4)

states:

"A judge should neither initiate nor consider ex parte . . . communications concerning a pending or impending proceeding."

While not every ex parte communication requires reversal, United States v. Green, 544 F.2d 138 (3rd Cir. 1976), cert. den'd, 430 U.S. 910, 97 S.Ct. 1185, 51 L.Ed. 2d 588 (1977),

"[S]ome conduct is so inimical to the fair and impartial administration of justice, however, that the presumption of prejudice arising therefrom is conclusive and requires a reversal." Kennedy v. Great Atlantic and Pacific Tea Co., 551 F.2d 593 (5th Cir. 1977).

In this instant action the law clerks of the District Court have clearly taken sides and prejudiced the case of Millan. A law clerk by the name of "Harry" had an ex parte conversation

with Lubell during a time that the Court, "Harry", Lubell and other defendants' attorneys knew that Millan would be out of the country to attend the Olympic Games in Seoul, Korea. These ex parte conversations were kept from Millan by the law clerk "Harry" and by Lubell and it was only the honesty of one of the defense counsel that prevented Millan from being totally ignorant of the ex parte conversation between "Harry" and attorney Steven Lubell. That ex parte conversation not only completely prejudiced Millan's case, it forced Millan to cancel his trip to Korea to the Olympics Games after he had requested of the Court permission to attend the games and had been given that permission by the Court. The District Court even went so far as to schedule the start of the trial when Millan returned from the Olympics in October of

1988. See: Appendix Z, pages A-131-133, para 2.

Millan believes that one further manifestation of these ex parte conversations came when the Court moved all hearings in this case from the public motion day time schedule on 10:00 am. to 2:30 in the afternoon and placed court security personnel directly behind Millan when Millan was speaking at the court podium. These security personnel watched every move Millan made, entering the Court at the same time as Millan and sitting in the public seats behind and to the side of Millan, intimidating Millan in such a way that he was not able to have the freedom to argue his case. Millan can find no reason for the movement of Millan's case away from public view to 2:30 in the afternoon and Millan can find no reason for the

presence and intimidation of Millan by court security personnel in this action.

There is no record that the District Court has ever had to discipline Millan, or that there has been any disruptive conduct by Millan. further, there is no record of any misrepresentation or discourtesy to the District Court that would provide any reason for the drastic measures that the court put in place. Millan believes that the ex parte conversation with Lubell and "Harry" were the catalyst for these drastic measures that began on the morning of September 26, 1988 and carried into the other hearings in this case. Millan to this day has never been informed by the court of the necessity for the security personnel provided by the court to watch Millan.

Although Millan has no way of knowing what the two men talked about,

the ex parte conversation occurred after September 13, 1988 and the Court moved the case out of the regular motion day calendar schedule into an afternoon schedule behind his criminal calendar on September 26, 1988, and placed security personnel behind Millan when Millan was trying to argue his case at the court podium that same day.

Court Records and Opinions

In any proceeding before the District Courts, the final written orders of the court have critical significance, these are the records that the courts of appeal rely on to examine any appeal before them. In this case the bias of the District Court is clearly shown by the following:

The District Court in its Order granting partial summary judgment (CR-93) to defendants relies on three

events that did not happen and Millan challenges the District Court to produce the records in this case that the three listed events occurred in the manner that the district court has noted them in its order (See: App D, pgs A-14-16)

(a) The Court,

"at the July 25 shareholder meeting, Millan himself filled out and back-dated a blank stock certificate to reflect Marsha Bennett's ownership of 15,000 shares of Fashion Stock."

Nothing of the kind happened at the shareholders meeting on July 25.

(b) The Court,

"Citing evidentiary rules relating to evidence of similar acts, he also alleges that Bennett and Mrs. Steinbaugh laid waste to their home in order to collect insurance proceeds."
(Appendix D, page A-20.)

There is nothing in the records of these proceedings that will show that Millan ever made such an allegation

either orally or in any written document before this Court.

(c) The Court,

"A special Board meeting was called for July 25, 1984. On that day, Millan met with Bennett and Steinbaugh...." (App D, pg A-13-14)

There is nothing in the court records that reflect Millan met with Steinbaugh on July 25, 1984 or at any time after the breakup of Bennett and Millan in early June 1984.

(d) The Court,

"Bennett denies the charge, alleging that she was not even an officer of the corporation at that time. having resigned on July 31, 1984. The declaration of Murray Gardner [the president of the corporation](brackets mine) however states that Bennett never resigned at any time and that subsequent to July, 1984, she sent an accountant who had full access to Fashion's books and records for purposes of preparing tax forms and financial statements." (App D, page A-17)

The District Court neglected to say that the "accountant" was Uday Raj Sawhney, the present husband of Bennett,

a material witness that handled the corporations tax and financial affairs from 1984 until 1987, and that Bennett and Lubell concealed his identity from Millan and that Uday Raj Sawhney was the reason for the perjury, concealment of documents and witnesses as shown in Appendix BB[B]-[I], pages A-143-158.

Actions of the Law Clerk "Harry"

It is Millan's view that a law clerk is much more than office staff to a judge.

"They are sounding boards for tentative opinions and legal researchers who seek authorities that affect decision. Clerks are privy to the judge's thoughts in a way that neither parties to the lawsuit nor his most intimate family members may be." Hall v. Small Business Admin., 695 F.2d 175 (5th Cir. 1983).

The law clerk has a duty

"as much as that of the trial judge to avoid contacts outside the record that might affect the outcome of the litigation."

Kennedy v. Great Atlantic and Pacific Tea Co., 551 F.2d 593, 596 (5th Cir. 1977).

A law clerk may not do what is prohibited to the judge. Id. See also Price Bros. Co. v. Philadelphia Gear Corp., 629 F.2d 444, 447 (6th Cir. 1980). Therefore, a law clerk may not have ex parte communications with parties to a litigation pending or impending. Such contact would be grounds for recusal and reversal of the case.

The Court Reporter

Millan further believes that the Court Reporter has a further duty to be impartial and to reproduce complete transcripts of court hearings in time for noticed appeals. Millan filed a notice of appeal on October 17, 1988 and requested transcripts of the hearings of September 26, 1988 and October 17, 1988 from the court reporter. It was not

until February 27, 1989 that Millan received copies of the transcripts. However the morning session of September 26, 1988 was not sent to Millan and to this date of May 27, 1990 Millan has never received that critical document from the court reporter. Millan has not submitted payment to the court reporter because the transcripts were incomplete. Millan will submit payment when the transcripts he ordered are complete and sent to Millan.

Federal Rules of Civil Procedure "Rule 11"

A litigant is entitled to due process, an impartial tribunal, and to a judge who obeys the mandate of the law. Rule 11 was amended by Congress in 1983.

"The new language is intended to reduce the reluctance of courts to impose sanctions . . . by emphasizing the responsibilities of the attorney and reinforcing those

obligations by the imposition of sanctions." Advisory Committee Note, 97 F.R.D. 165, 198 (1983).

Rule 11 requires that an attorney certifies by his signature that "to the best of his knowledge, information, and belief formed after reasonable inquiry," the paper is well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. Fed.R.Civ.P. 11. The amended rule makes sanctions mandatory once a violation of any of the certification requirements is found.

"If a pleading, motion, or other paper is signed in violation of this rule, the court . . . shall impose . . . an appropriate sanction." Id.

The court does not have discretion to conclude that sanctions are unwarranted and to deny them.

"By making sanctions mandatory, the drafters of Rule 11 sought to discourage any collegial

inclination to overlook or minimize violations." Nelken, Sanctions Under Amended Federal Rule 11--Some "Chilling" Problems in the Struggle between Compensation and Punishment, 74 Geo. L.R. 1313, 1322 (1986).

The detection and punishment of a violation of the signing requirement, encouraged by the amended Rule, is part of the court's responsibility for securing the system's effective operation. The court thereafter has the power to sanction the attorney, the client, or both, with discretion to tailor the sanctions to the facts of the case.

Enforcing Rule 11 is a judge's duty. Once a judge is made aware of a Rule 11 violation, he must investigate and sanction the offender. A motion for Rule 11 sanctions may be frivolous, but if it is serious, it is not to be ignored. See Szabo Food Service, Inc. v. Canteen Corp, 823 F.2d 1073, 1084

(7th Cir. 1987), cert. den'd, U.S. 108 S.Ct. 1101, L.Ed. 2d 1988. The Szabo court held that a Rule 11 motion which was brushed away required an explanation for the abrupt dismissal of the claim. Id.

Inherent in Rule 11 requiring reasonable inquiry into facts which support pleadings is the continuing duty to tell the truth. See Calif. Code of Professional Conduct Rule 7-105. (See: Appendix U, pg A-120-121.) This obligation extends to statutory language, case law, and facts. In addition, an attorney (or his client) must not suppress any evidence he is legally obligated to reveal. Thus, an attorney who violates the Rule 11 accuracy in pleading also violates his professional code of ethics.

In this instant case attorney Steven Lubell has been given open season

on Millan's rights by the District Court by telling Millan to take his complaints of attorney misconduct to the State Bar of California.

"Once the court finds an attorney has violated rule 11, it must impose sanctions." Unioil Inc., et al. v. E. F. Hutton, et al., 809 F.2d 548, 559 (9th Cir. 1986).

While a basic purpose of Rule 11 is to streamline litigation and avoid delay,

". . . a district court may impose a punitive sanction for the filing of a paper that lacks factual foundation and is intended to mislead the Court and opposing parties, even if the paper does not significantly delay proceedings because of the disrespect shown to the judicial process." Mercury Service, Inc. v. Allied Bank of Texas, 117 F.R.D. 147, 156 (1987).

Thus, sanctions against

". . . the unscrupulous lawyer knowingly deceiving the court" are within the scope of the court's Rule 11 interpretation. Golden Eagle Distributing Corp. v. Burroughs Corp., 801 F.2d 1531 (9th Cir. 1986).

Thus, a pro se litigant has a right to be protected from partial and biased

judges, to have the law as it is written enforced, and to have fair and honest dealings with opposing attorneys. Any pro se litigant has a basic right to a fair trial in front of an unprejudiced factfinder.

3. WHETHER A LITIGANT WHO HAS BEEN THE VICTIM OF FRAUD ON THE COURT CONTINUES TO BE BOUND BY THE FINAL JUDGMENT RULE BEFORE HE MAY SEEK RELIEF FROM THE COURTS OF APPEAL OR THE UNITED STATES SUPREME COURT WHEN THE DISTRICT COURT REFUSES TO ACT UPON THE COMPLAINTS OF MISCONDUCT BY THE ADVERSE PARTY.

There can be no question more important for the people of the United States to know than that their courts, particularly their federal courts and the judicial process, is completely and fairly protected from all who seek to deny the equal representation and access to the courts guaranteed to all citizens by the United States Constitution. This question affects each and every person

that seeks redress within the confines of the federal courts. The integrity of the judicial process demands that each citizen be treated fairly and equally before the bench of the United States courts. There can be no room for even the slightest fraud or misconduct to stain the integrity of the United States federal courts.

The Congress has spoken with an emphatic voice by enacting Federal Rules of Civil Procedure Rule 60(b), 28 U.S.C.A., "Fraud Upon the Court:"

"On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been

satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C. § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action."

Millan contends that if the courts have the power to set aside a judgment for fraud and misconduct, they most certainly have the power to set aside

judgments, orders or proceedings before final judgment when brought to their attention by the aggrieved party. This is particularly true when the District Court has refused to do its duty to enforce the law as it is written as is the case in this instant action.

The Supreme Court of the United States has spoken with clear language of the duties of the courts when fraud, concealment of documents and other misconduct is discovered in any proceeding within the federal court system. The court's words are clear in this regard. The judgment, order or proceeding is null and void.

The Supreme Court spoke of this in Hazel-Atlas Glass Co. v. Hartford-Empire Co. where attorneys for Hartford-Empire had obtained a judgment by fraud on the court.

"This action involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants to safeguard the public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud. Hazel-Atlas Glass Company v. Hartford-Empire Co., 322 U.S. 246-248 (1943)."

In this instant case, the plaintiff has been the victim of perjury, concealment of witnesses and documents as documented above in the preceding pages of this Writ of Mandamus.

The Supreme Court has spoken very clearly upon the issue of concealment of documents and the effect of their concealment upon a judgment in a case.

"Our system of civil litigation cannot function if parties, in violation of court orders, suppress information called for upon

discovery. "Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession." Hickman v. Taylor, 329 U.S. 495, 507, 67 S.Ct. 385, 392, 91 L.Ed. 451 (1947). The Federal Rules of Civil Procedure the discovery process for the earlier--and inadequate--reliance on pleadings for notice-giving, issue-formulation, and fact-revelation. As the Supreme Court stated in Hickman v. Taylor, *supra*, "civil trials in the federal courts no longer need be carried on in the dark. The way is now clear, consistent with recognized privileges, for the parties to obtain the fullest possible knowledge of the issues and facts before trial." 329 U.S. at 501, 67 S.Ct. at 389. The aim of these liberal discovery rules is to "make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent." United States v. Proctor & Gamble Co., 356 U.S. 677, 683, 78 S.Ct. 983, 986, 2 L.Ed.2d 1077 (1958). It is axiomatic that "[d]iscovery by interrogatory requires candor in responding." Dollar v. Long Mfg. N.C., Inc., 361 F.2d 613, 616 (5th Cir. 1977).

"Through its misconduct in this case, Ford completely sabotaged the federal trial machinery, precluding the "fair contest" which the

Federal Rules of Civil Procedure
are intended to assure." Rozier v.
Ford Motor Co., 573 F.2d 1332
(1978).

It does not stand to reason that the final judgment rule was enacted by Congress to allow the perpetrators of fraud on the court, perjury, concealment of documents, discovery misconduct and misrepresentation of prior court proceedings to hide behind its cloak, make the aggrieved party go through the expense of trial and then through the expense of the appeal process before the aggrieved party could seek relief. Particularly, the final judgment rule was not enacted to allow a district court to proceed with the conduct of a case when the misconduct of the opposing side was brought to its attention and that district court refused to act as was its duty under the law to so act.

In this instant action, Millan has been prevented by the perjury, fraud on the court, concealment of documents and witnesses from amending his complaint and has caused a partial summary judgment against him in favor of the defendants in this action. Millan has further been placed in a position of having reported the misconduct to the District Court only to be told by that court to take his complaints to the State Bar of California. By that action the court has prevented Millan from fully and fairly being able to present his case.

On June 13, 1988 filed a motion to recuse the Hon. William J. Rea concurrently with a motion to disqualify Lubell. It has now been almost two years since Millan filed that motion and at this writing the District Court has refused to render a decision.

V. CONCLUSION

The actions of defendant Marsha Bennett and defense counsel taken singly would be sufficient to warrant disqualification; however, taken in their totality they suggest a pattern of misconduct that is far beyond any that this petitioner can find in any cited case.

Millan has provided the Court with the evidence of this misconduct and the pervasive nature of its use in completely prejudicing Millan's case.

Millan has further provided this Court with the actions of the District Court in its response to Millan's pleas for the Court to step in and put a stop to the misconduct so pervasive in this case.

Millan has also provided this Court with his actions in trying to appeal to

the Ninth Circuit Court of Appeals and his being unable to comply with the Rules of the Court of Appeals by the actions or inaction of the District Court and its clerks.

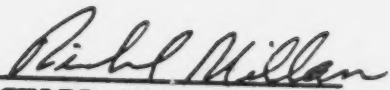
It is with the above in mind that Millan has presented the United States Supreme Court with the facts in this case and has asked this Court to review the actions of the District Court, defendant Marsha Bennett and defense counsel Steven Lubell and determine if the actions related in this document satisfy the intent of the framers of the Constitution, the Canons of the Judiciary, The Rules of Professional Conduct, the Federal Rules of Civil Procedure and the Rules of Court.

Millan firmly believes that a fair reading of this Writ of Mandamus will lead this Court to grant the following orders to Millan.

1. An ORDER recusing the Hon. Judge William J. Rea.
2. An ORDER disqualifying defense counsel Steven Lubell.
3. An ORDER striking the answer and any defense of defendant Marsha Bennett.
4. An ORDER for summary judgment against defendant Marsha Bennett.
5. An ORDER striking the answer and any defense of defendant Colleen Steinbaugh.
6. An ORDER for summary judgment against defendant Colleen Steinbaugh.
7. An ORDER for costs and attorneys' fees as the Court deems proper.

RESPECTFULLY SUBMITTED

This date of July 10, 1990


RICHARD MILLAN
COUNSEL OF RECORD
In Propria Persona



90-155

Supreme Court, U.S.
FILED
JUL 21 1990
JOSEPH F. SPANIOL, JR.
CLERK

No.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1989

In re RICHARD MILLAN, Petitioner

APPENDIX TO
PETITION FOR A WRIT OF MANDAMUS/
PROHIBITION TO THE UNITED STATES
DISTRICT COURT FOR THE CENTRAL DISTRICT
OF CALIFORNIA,
AND THE HONORABLE EDWARD RAFEEDIE, AND
THE HONORABLE WILLIAM J. REA, JUDGE OF
THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

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FILED JUNE 1, 1988

UNITED STATES COURT OF APPEALS
FOR THE NINTH COURT

RICHARD MILLAN)	88-5972
)	-
Plaintiff-Appellant	)	DC# CV-87-2283-WJR
	)	Central California
v.)	
)	
MARSHA BENNETT	)	ORDER
et al)	
)	
Defendants-Appellees)	
)	
_____)	

Before: HUG, BRUNETTI and NOONAN,
Circuit Judges

"Appellant requests that this Court stay the district court proceedings pending his appeal of the district court's order entered April 21, 1988, denying leave to amend his complaint and refusing to extend the discovery cut-off date. This is not a final, appealable order under 28 U.S.C. §§ 1291, 1292 or the collateral order doctrine.

"Accordingly, this appeal is dismissed for lack of jurisdiction. Appellant's request for a stay is denied."

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICHARD MILLAN	)	CV 87-2283 WJR
)	
Plaintiff	)	ORDER DENYING
	)	LEAVE TO AMEND
v	)	COMPLAINT
)	
MARSHA BENNETT,)	
COLLEEN S. STEIN-)	
BAUGH, RICHARD W.)	
STEINBAUGH, MURRAY)	
GARDNER, BONNIE)	
GARDNER, FASHION)	
EMBROIDERY, INC.)	
)	
Defendants)	
)	
)	
)	

"This matter comes before the Court on plaintiff's motions for leave to amend his complaint and to continue the discovery cutoff and pretrial conference dates. The court having considered the papers filed in support thereof and in opposition thereto and having heard oral argument,

IT IS HEREBY ORDERED that the motions are DENIED.

The Court finds as follows:

"The propriety of a motion for leave to amend is generally determined by reference to several factors: (1) undue delay; (2) bad faith; (3) futility of amendment; and (4) prejudice to opposing party. Hurn v. Retirement Fund Trust etc. 648 F.2d 1252, 1254 (9th Cir. 1981).

"The Court has previously ordered the parties to complete discovery by April 18, 1988. Plaintiff seeks two weeks before that date to amend his complaint to add eight additional defendants and ten additional causes of action. Many of the same claims have apparently been raised by plaintiff against the same parties as cross-claims in an older state court

action. Based on these facts, the Court finds (1) that the opposing party would be _ significantly prejudiced by the magnitude and timing of the proposed amendment; and (2) that the amendment is untimely since plaintiff knew or should have known of these claims and parties at the time he filed the action.

"For all the above reasons, the motion for leave to amend the complaint, as well as the motion to continue discovery cutoff and pretrial conference dates, are DENIED.

"Dated: April 19, 1988

WILLIAM J. REA
UNITED STATES
DISTRICT JUDGE"

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICHARD MILLAN	)	CV 87-2283 WJR(Tx)
)	
Plaintiff	)	ORDER DENYING
	)	MOTION TO
v	)	DISQUALIFY
	)	JUDGE REA
MARSHA BENNETT,)	
COLLEEN S. STEIN-)	
BAUGH, MURRAY)	
GARDNER, BONNIE)	
GARDNER, FASHION)	
EMBROIDERY, INC.)	
Defendants)	
)	

"Plaintiff Richard Millan brought this motion for a new trial and to disqualify Judge Rea on June 13, 1988. The Court, having carefully read and considered the papers and pleadings on file and the governing law, hereby denies plaintiff's motion.

Plaintiff moves to disqualify Judge Rea pursuant to 28 U.S.C. § 144 on the grounds that Judge Rea has a personal bias or prejudice against the plaintiff. A violation of § 144 requires that the bias or prejudice of the Judge be both

personal, i.e., directed against the party, and extrajudicial.

In the instant case, the plaintiff's motion is legally insufficient. Plaintiff fails to specifically allege facts to support the contention that the Judge exhibited bias or prejudice toward the plaintiff stemming from extrajudicial sources.

United States v. Silba, 624 F.2d 864 (9th Cir. 1980). For the same reasons, plaintiff's claim pursuant to 28 U.S.C. § 455 and plaintiff's constitutional claim are denied.

Defendants Marshal Bennett and Colleen Steinbaugh request that the Court impose sanctions on plaintiff pursuant to Federal Rules of Civil Procedure Rule 11. The Court does not find sanctions warranted.

IT IS SO ORDERED.

The Court further orders the Clerk to serve copies of this order on all parties by United States mail."

Dated: August 26, 1988

Edward Rafeedie
United States
District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICHARD MILLAN	)	CV 87-2283 WJR
Plaintiff	)	ORDER ON
	)	MOTIONS FOR
v	)	PARTIAL SUMMARY
	)	JUDGMENT;
MARSHA BENNETT,	)	FINDINGS OF
COLLEEN S. STEIN-	)	FACT AND
BAUGH, MURRAY	)	CONCLUSIONS
GARDNER, BONNIE	)	OF LAW THEREON
GARDNER, FASHION)	
EMBROIDERY, INC.)	
Defendants)	
)	

"This matter comes before the court on the motions of plaintiff Richard Millan and defendants Marsha Bennett and Colleen Steinbaugh for partial summary judgment. The Court having considered the papers filed in support thereof and in opposition thereto and having heard oral argument,

IT IS HEREBY ORDERED that plaintiff's motion is DENIED and defendants' motion is GRANTED in part, and DENIED in part.

The Court finds as follows:

BACKGROUND

Plaintiff, Richard Millan, brings this action against Fashion Embroidery, Inc. ("Fashion") and several individuals who were associated with the company: Colleen Steinbaugh (hereinafter "Mrs. Steinbaugh"), Marsha Bennett, Murray Gardner and Bonnie Gardner. The complaint asserts several violations of the Racketeering and Corrupt Organizations Act ("RICO"), 18 U.S.C. Sec. 1962 et seq., along with pendent claims for conversion and intentional affliction of emotional distress. Mrs. Steinbaugh and Bennett now move jointly for summary judgment as to the RICO claims against them. Millan has filed a cross-motion for summary judgment against these two defendants.

Fashion was founded in 1978 by three couples: the Gardners, the Steinbaughs and the Williams. Each couple was issued 30,000 shares. In October, 1983, Millan, a potential investor, was referred to the Williams, who were selling their interest in the company. Millan met with the Williams, but alleges that he did not buy these shares at this time because he wanted nothing less than a controlling interest in the company.

The Williams referred Millan to Mrs. Steinbaugh as another prospective seller of Fashion shares. The Steinbaughs were in the process of getting divorced and, according to Millan, were devising a scheme to file separately for bankruptcy after the divorce and to hide their ownership of the shares in Fashion. Millan alleges that he was told by Mrs. Steinbaugh and

by defendant Marsha Bennett that Mr. Steinbaugh had already achieved this by nominally selling his 15,000 shares for \$20,000 to Mr. Gardner, who paid for the shares indirectly from corporate funds and who was allegedly to give back the shares once the bankruptcy proceedings ended.

Mrs. Steinbaugh was also looking for someone to purchase here 15,000 shares. Millan met with her and, incidentally, met Mrs. Steinbaugh's daughter, Marsha Bennett, for the first time. Millan and Bennett were married two months later, in December, 1983. Millan alleges that Bennett continually solicited him to buy her mother's shares. At this time, however, Millan had yet to purchase any shares in Fashion.

In January, 1984, Millan went to a Fashion shareholder meeting with proxies to vote the Williams' 30,000 shares and Mrs. Steinbaugh's 15,000 shares. He became Chairman and President on that date. He then purchased Williams' 30,000 shares in exchange for a \$100,000 promissory note. Millan did not purchase Mrs. Steinbaugh's 15,000 shares at this time because, he alleges, he refused to participate in any scheme to defraud the bankruptcy court.

In July, 1984, Bennett and Millan were separated. A special Board meeting was called for July 25, 1984. On that day, Millan met with Bennett and Steinbaugh and, in what was allegedly a last ditch effort to save his marriage, executed a \$50,000 promissory note for the 15,000 shares. The note was made payable to both Bennett and Mrs. Steinbaugh, although it appears that

Mrs. Steinbaugh was still the owner of record of the shares at the time. Despite this move, Millan was voted out of office at the shareholder meeting that evening.

He never made any payments on the \$50,000 note, and never received the 15,000 shares. Millan also suspended payment on his \$100,000 promissory note to the Williams, after making payments totalling \$17,000.

In late September, 1984, Mrs. Steinbaugh filed a Chapter 7 bankruptcy petition. Millan alleges that she failed to list as assets either the Fashion shares or the \$50,000 promissory note. The petition was withdrawn in January, 1985; according to Millan, the withdrawal was a result of his threats to reveal fraud to the bankruptcy court.

Mrs. Steinbaugh and Bennett deny any attempt to defraud, claiming that

Mrs. Steinbaugh did not in fact own either the shares or the note given as consideration of them. They allege that Bennett had agreed some time earlier to buy the shares from her mother for \$25,000, unless a better deal came along.

Millan's offer was a better deal, but since he never performed, ownership reverted back to Bennett, not to her mother.

Some support for this story is found in the fact that, at the July 25 shareholder meeting, Millan himself filled out and back-dated a bland stock certificate to reflect Marsha Bennett's ownership of 15,000 shares of Fashion stock. On the other hand, as Millan notes, there is no written record of such an agreement between Bennett and Mrs. Steinbaugh. Further, Murray Gardner, then-President of the

corporation, states in his declaration that Mrs. Steinbaugh never sold her shares.

The motions before the Court are directed at counts five, six, seven and eight of the complaint, which allege RICO violations on the part of Bennett and Mrs. Steinbaugh. Counts five and seven allege violations of 18 U.S.C. Sec. 1962 subsec. (a), (b) & (c). The alleged fraud on the bankruptcy court by Mrs. Steinbaugh and Bennett -- and their knowledge of Mr. Steinbaugh's alleged acts of bankruptcy fraud -- form the basis of the predicate act allegations underlying these two causes of action. The only other allegation of fraudulent conduct pertaining to these two defendants referred to in Millan's claims under these sections involves tax forms sent in early 1985. Bennett and Murray Gardner allegedly sent a false Form 1099

to the IRS which misstated Millan's position with and income from Fashion [para. 57], and also submitted fraudulent state and federal tax returns for Fashion. [paras. 58 and 59]

Bennett denies the charge, alleging that she was not even an officer of the corporation at that time, having resigned on July 31, 1984. The declaration of Murray Gardner, however, states that Bennett never resigned at any time and that subsequent to July, 1984, she sent an accountant who had full access to Fashion's books and records for purposes of preparing tax forms and financial statements.

Counts six and eight of the complaint allege a conspiracy to violate RICO under 18 U.S.C. Sec. 1962(d). The factual allegations realleged by reference under the heading of Count six appear to be limited to those paragraphs

detailing the alleged bankruptcy fraud perpetrated by Mrs. Steinbaugh. count eight incorporates more extensive factual allegations, realleging by reference paragraphs 23-27 of the complaint. These paragraphs allege a scheme whereby Mr. Steinbaugh and the Gardners programmatically made cash sales to vendors and falsified Fashion's books. It is further alleged that these three submitted false tax records yearly, not only as to income but also as to employee withholdings. (Bennett's involvement in submitting the 1985 returns is alleged to be a continuation of this practice.) These three also allegedly made false representations to Millan that the books were in order and taxes were current in order to induce him to invest in Fashion.

ANALYSIS

1. Counts Five and Seven

18 U.S.C. Sec. 1964 confers

standing on "[a]ny" person injured in his business or property by reason of a violation of section 1962...." A person is therefore entitled to sue who is injured by (1) the use of the proceeds of a pattern of racketeering activity to acquire an enterprise (Sec. 1962 (a)); (2) the maintenance of an interest in or control over an enterprise through a pattern of racketeering activity [Sec. 1962(b)]; (3) a person who participates in the affairs of an enterprise through a pattern of racketeering activity [Sec. 1962(c)]; or (4) a conspiracy to violate any of the foregoing sections.

The predicate acts underlying counts five, six and seven, as alleged in plaintiff's complaint, consist in toto of mail, wire and bankruptcy fraud allegations derived from (1) the Steinbaugh's alleged attempts to hide assets from the bankruptcy court; and

(2) the submission of three false tax returns in 1985 by Bennett. These allegations, taken together, clearly lack the "continuity plus relationship" necessary to constitute a pattern of racketeering activity, nor do they pose a "threat of continuing activity". See Medallion Television Ent. v. SelecTV of California, 833 F.2d 1360, 1362-63 (9th Cir. 1987).

Plaintiff argues at length that he has also been injured by other conduct constituting RICO predicate acts, including (1) various alleged irregularities in a tax lien sale of Fashion's assets, including lack of proper notice, and (2) various violations of securities regulations committed by the defendants in selling him the Fashion stock. Citing evidentiary rules relating to evidence of similar acts, he also alleges that Bennett and Mrs. Steinbaugh

laid waste to their home in order to collect insurance proceeds. None of these allegations are to be found in plaintiff's lengthy complaint, and the Court will not consider them at this late juncture.

With respect to those claims asserted under Sec. 1962(a), plaintiff has presented no evidence that he was injured by the use or investment of any proceeds the conduct alleged in the complaint may have generated. He therefore lacks standing to sue for violations of Sec. 1962(a). See e.g., NL Industries, Inc. v. Gulf & Western Industries, Inc., 650 F. Supp. 1115 (D. Kan. 1986).

With respect to any claims under Sec. 1962(b), the bankruptcy fraud and false tax filings alleged by plaintiff, even if true, do not reasonably support a conclusion that plaintiff has been injured by the maintenance of an

interest in an enterprise through a pattern of racketeering activity.

Sec. 1962(c) requires that the plaintiff's injury be caused by the commission of the predicate acts themselves. Sedima, S.P.R.L. v. Imrex Corp., 105 S. Ct. 3275, 3285-86, 473 U.S. 479 (1985). This requirement is satisfied only by Bennett's alleged false tax filings in 1985, which plaintiff alleges have resulted in an IRS assessment against him. These, standing alone, do not even approach the "threat of continuing activity" articulated by the Medallion court as the benchmark of a pattern of racketeering activity. Medallion, supra, 833 F.2d at 1363.

1. Counts Six and Eight

These claims assert a conspiracy to violate RICO under Sec. 1962(d). Liability under this section requires only proof of an agreement, the

objective of which is a substantive violation of RICO (e.g. conducting the affairs of an enterprise through a pattern of racketeering). United States v. Tille, 729 F.2d 615, 619 (9th Cir. 1984). Only when proof of such an objective is lacking must the evidence establish the defendant's participation in the predicate offenses. Id.

As noted above, the factual allegations found under count six are limited to reallegations of those paragraphs detailing the alleged bankruptcy fraud perpetrated by Mrs. Steinbaugh. Having found these insufficient to support liability under Sec. 1962(a), (b) or (c), they are an inadequate basis for a conspiracy claim under Sec. 1962(d).

Count eight, however, incorporates by reference a more extensive pattern of tax fraud, practiced on an annual basis throughout Fashion's existence, as well as allegations of fraudulent

misrepresentations directed at plaintiff to induce him to invest in the company. These allegations arguably satisfy Medallion's continuity requirement, though the relationship between the alleged predicate acts is tenuous. It is also problematic that the complaint alleges almost no active participation by Bennett and Mrs. Steinbaugh, the moving defendants, in the charges underlying this claim. Though liability may lie without active participation, see Tille, supra, none of the parties have addressed the issue of whether the requisite agreement has been established.

Because the parties have failed to address the ramifications of the broader factual allegations incorporated under count eight or the distinct legal analysis applicable to RICO conspiracy allegations, the Court finds denial of

defendant's motion without prejudice appropriate with respect to this claim.

For all the above reasons, defendants' motion for summary judgment is GRANTED as to counts five, six and seven, and DENIED without prejudice as to count eight. Plaintiff's motion for summary judgment is DENIED."

Dated: December 6, 1988

William J. Rea
United States
District Judge

EXCERPTS FROM
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
CIVIL APPEALS DOCKETING STATEMENT

Reproduced in part:

".....H. Brief Description of the
Nature of Action and the Result
Below:

Plaintiff filed this action on
April 4, 1987. 6 RICO counts of
bankruptcy, mail and wire fraud,
and conspiracy with 2 pendant state
claims were sustained by the
District Court on July 20, '87.
Attorney Steven Lubell entered into
the case on June 12, 1987 and began
an unconscionable plan or scheme
which was designed to improperly
influence the Court in its deci-
sions against Plaintiff, a non-law-
yer acting in pro se. Mr. Lubell
began by hiding Defendant Marsha
Bennett from service of process and

then hiding her true identity from Plaintiff. There followed a deliberate pattern and plan of deception by withholding the identities of parties and documents from discovery. The scheme went further to include perjury and subornation of perjury in deposition, interrogatories, and requests for admissions by attorney Steven Lubell and Defendant Marsha Bennett. In February 1988, upon learning the true name of Marsha Bennett, Plaintiff also learned the identities, actions, and culpability of the other parties and Plaintiff immediately moved to amend his complaint for the first time on March 14, 1988. No trial date had been set, discovery had not closed and no trial conference had been held. At the oral arguments on

this motion, attorney Lubell so misrepresented the record of this case and prior cases that the District Court denied Plaintiff's motion to amend. The Court found in part that defendants would be prejudiced even though defendants stated in open court that they would not be prejudiced. That the amendment was untimely since Plaintiff knew or should have known of these claims and parties at the time the action was filed. Further, a prior state case had nothing to do with this present case, and Plaintiff will prove the above was misrepresented to the District Court by attorney Lubell."

FILED 2/ 90

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

U.S. Court of Appeals Docket Number:

88-6624

Lower Court Docket Number:

CV-87-2283-WJR

Short Title: Millan v. Bennett

ORDER

"A review of the file in this case reveals that the appellant has failed to perfect the appeal as prescribed by the Federal Rules of Appellate Procedure.

"Pursuant to Ninth Circuit Rule 42-1, this appeal is dismissed for failure to comply with the rules requiring processing the appeal to hearing.

"A certified copy of this order sent to the district court,

agency or Tax Court shall act as
and for the mandate of this court."

FOR THE COURT:

Cathy A. Catterson
Clerk of Court
By: Joseph Williams
Deputy Clerk

MILLAN COMPILED THE FOLLOWING
CHRONOLOGICAL CHART FOR THE YEARS
1983-1987 TO SHOW THE DISTRICT COURT THE
MULTIPLE SCHEMES AND RICO VIOLATIONS
PERPETRATED BY THE DEFENDANTS IN THIS
ACTION AND REFERENCED THIS CHART TO
DOCUMENTS AND COURT RECORDS NOW OF FILE
WITH THE COURT:

PATTERN AND CONTINUITY
OF RICO VIOLATIONS

CR: 87, pages 27 through 47

[RICHARD STEINBAUGH]
[COLLEEN STEINBAUGH]
[(APRIL 1983)]
[]

[JACK PETERS ATTY REFERS]
[RICHARD AND COLLEEN STEINBAUGH]
[TO BANKRUPTCY ATTY. RICHARD]
[STOPHER. (APRIL 1983)]
[]

EXHIBIT 65 PAGE 503 PAR 2 LN 25
EXHIBIT 76 PAGE 571
EXHIBIT 5 PAGE 93 PAR 20(a)
EXHIBIT 24 PAGE 375
EXHIBIT 4 PAGE 56 PAR 2 (a)(b)

[]
[RICHARD STEINBAUGH AND]
[COLLEEN STEINBAUGH]
[SET SCHEME 1-2 TO DEFRAUD]
[BANKRUPTCY COURT IN MOTION.]
[(APRIL 1983)]
[]

[]
[CO-CONSPIRATORS MARSHA BENNETT]
[MURRAY GARDNER AND BONNIE GARDNER]
[JOIN SCHEME TO DEFRAUD BANKRUPTCY]
[COURT. (APRIL 1983)]

[(APRIL 1983-AUGUST 1983)]
[]

COURT R. 4 PAGE 5 PAR 16
EXHIBIT 10 PAGE 231 PAR 7 AND
EXHIBIT 12 PAGE 273 PAR 7
DECLARATION OF RICHARD MILLAN --
PAGE 22 PAR 74

[]
[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]
[VIOLATION OF TITLE 18 USC 1343]
[]

[]
[SCHEME 1 DEFRAUD BANKRUPTCY]
[COURT:]
[RICHARD STEINBAUGH RECEIVES]
[\$20,000.00 BY U.S. MAIL FROM]
[SISTER JOLENE RUNNER IN FLORIDA]
[MURRAY GARDNER DEPOSITS \$20,000]
[IN FASHION BANK ACCOUNT,]
[R. STEINBAUGH THEN WRITES]
[FASHION CHECK FOR \$20,000 TO M.]
[GARDNER, WHO DEPOSITS \$20,000]
[IN HIS CHECKING ACCOUNT AND]
[WRITES R. STEINBAUGH \$20,000.]
[CHECK FROM GARDNERS ACCOUNT]
[(AUGUST 26 1983)]
[]

EXHIBIT 16 PAGE 334
EXHIBIT 27 PAGE 378
EXHIBIT 28 PAGE 379
EXHIBIT 23 PAGE 374
EXHIBIT 24 PAGE 375

[]
[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]
[VIOLATION OF TITLE 18 USC 1343]
[]

[_____]

[]
[SCHEME 6 DEFRAUD COMMONWEALTH]
[FINANCIAL:]
[COMMONWEALTH FINANCIAL SUES]
[COLLEEN STEINBAUGH FOR THE HOME]
[SHE AND MARSHA BENNETT LAID]
[WASTE TO ON SEPTEMBER 21, 1983]
[]

EXHIBIT 4 PAGE 58 PAR 10(a)

EXHIBIT 73 PAGE 548-563

EXHIBIT 74 PAGE 564-569

[]
[RICHARD MILLAN MEETS WITH THEDA]
[AND MATTHIAS WILLIAMS TO]
[DISCUSS SALE OF THEIR 30,000]
[SHARES OF FASHION STOCK TO]
[MILLAN. OCTOBER 1983]
[]

COURT R. 1 PAGE 12-13 PAR 41-42
DECLARATION OF RICHARD MILLAN-
PAGE 9-10 PAR'S 30-36

[]
[SCHEME 3: DEFRAUD MILLAN]
[RE: FASHION EMBROIDERY STOCK]
[THEDA WILLIAMS TELEPHONES]
[COLLEEN STEINBAUGH TO COME AND]
[MEET MILLAN AT HER HOME.]
[STEINBAUGH ARRIVES AND TALKS]
[ABOUT HER COMING BANKRUPTCY]
[AND DIVORCE FROM R. STEINBAUGH]
[DISCUSSES WITH MILLAN HER PROXY]
[FOR 15,000 SHARES OF FASHION]
[STOCK SHE OWNS. AGREES TO MEET]
[WITH MILLAN AT THE LAW OFFICE]
[OF ERIC DEAN THE FOLLOWING WEEK]
[OCTOBER 1983]
[]

COURT R. 17 PAGE 7 PAR 23

EXHIBIT 9 PAGE 217 PAR 4-10

EXHIBIT 8 PAGE 195 PAR 1-2

[]

[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]
[]

[]
[SCHEME 3: DEFRAUD MILLAN]
[RE: FASHION EMBROIDERY STOCK]
[COLLEEN STEINBAUGH MEETS WITH]
[MILLAN AT THE OFFICE OF ERIC]
[DEAN. INTRODUCES MILLAN TO HER]
[DAUGHTER MARSHA BENNETT. TALKS]
[ABOUT HER COMING BANKRUPTCY]
[AND DIVORCE FROM R. STEINBAUGH]
[DISCUSSES WITH MILLAN HER PROXY]
[FOR 15,000 SHARES OF FASHION]
[STOCK SHE OWNS. AGREES TO GIVE]
[MILLAN HER PROXY TO VOTE HER]
[SHARES OF FASHION AT A MEETING]
[TO BE CALLED IN FUTURE]
[(OCTOBER 1983)]
[]

COURT R. 17 PAGE 7 PAR 24
COURT R. 19 PAGE 6 PAR 24
EXHIBIT 9 PAGE 217 PAR 4-10
EXHIBIT 8 PAGE 195 PAR 1-2

[]
[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]
[]

[]
[SCHEME 3: DEFRAUD MILLAN]
[RE: FASHION EMBROIDERY STOCK]
[MARSHA BENNETT BEGINS TO]
[SOLICIT MILLAN TO BUY HER]
[MOTHERS 15,000 SHARES OF STOCK]
[IN FASHION EMBROIDERY INC.]
[(OCTOBER/NOVEMBER 1983)]
[]

DECLARATION OF RICHARD MILLAN
PAGES 16-17 PAR'S 48-49 AND PAGE
19 PAR 58

[]
[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]
[]

[]
[SCHEME 4: DEFRAUD MILLAN RE:]
[CERTIFIED TANK MFG. INC.]
[MARSHA BENNETT TELEPHONES]
[MILLAN AT HIS HOME ON THE NIGHT]
[ON OR ABOUT NOVEMBER 26, 1983]
[DISCUSSES AMONG OTHER THINGS]
[HER MOTHER'S COMING BANKRUPTCY]
[AND DIVORCE FROM R. STEINBAUGH]
[DISCUSSES WITH MILLAN THE SALE]
[15,000 SHARES OF FASHION STOCK]
[OWNED BY COLLEEN STEINBAUGH.]
[SOLICITS MILLAN TO BUY HER]
[MOTHERS 15,000 SHARES OF STOCK]
[IN FASHION EMBROIDERY INC.]
[(NOVEMBER 26, 1983)]
[]

DECLARATION OF RICHARD MILLAN
PAGE 19 PAR 58

[]
[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]
[]

[]
[SCHEME 4: DEFRAUD MILLAN RE:]
[CERTIFIED TANK MFG. INC.]
[MARSHA BENNETT AND MILLAN MEET]
[AT BENNETT'S HOME ON NOVEMBER]
[27, 1983. BENNETT OFFERS TO]
[SELL MILLAN 1/2 INTEREST IN]
[]

[CERTIFIED TANK MFG. INC. FOR]
[\$500,000.00. EXCLAIMING:]
["TRUST ME RICHARD, TRUST ME,]
[ITS WORTH IT". THAT NIGHT]
[BENNETT PROCEEDED TO SEDUCE]
[MILLAN.]
[(NOVEMBER 27, 1983)]

DECLARATION OF RICHARD MILLAN
PAGES 19-20 PAR'S 59-66

[]
[MARSHA BENNETT AND MILLAN WERE]
[MARRIED ON (DECEMBER 2, 1983)]

DECLARATION OF MARSHA BENNETT
PAGE 3 DOCUMENT PAGE 42 PAR 7
DECLARATION OF RICHARD MILLAN
PAGE 21 PAR 72

[]
[SCHEME 1 DEFRAUD BANKRUPTCY]
[COURT:]
[MARSHA BENNETT AND COLLEEN]
[STEINBAUGH REVEAL TO MILLAN]
[THE WAY THE SCHEME WORKS THAT]
[RICHARD STEINBAUGH IS USING TO]
[DEFRAUD THE U.S. BANKRUPTCY]
[COURT. (DECEMBER 10, 1983)]

DECLARATION OF RICHARD MILLAN
PAGE 22 PAR 73

[]
[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]

[]
[SCHEME 1 DEFRAUD BANKRUPTCY]
[COURT:]
[MARSHA BENNETT AND COLLEEN]
[STEINBAUGH CAUSE MILLAN]
[TO WRITE LETTER TO RICHARD]

[STEINBAUGH ASKING HIM SPECIFIC]
[QUESTIONS RELATED TO HIS SCHEME]
[TO TO DEFRAUD THE BANKRUPTCY]
[COURT. (DECEMBER 19, 1983)]
[]

DECLARATION OF RICHARD MILLAN

PAGE 22 PAR 73

EXHIBIT 30 PAGES 382-384

EXHIBIT 3 PAGES 8-12

[]
[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]
[VIOLATION OF TITLE 18 U.S.C. 1341]
[]

[]
[SCHEME 1: DEFRAUD BANKRUPTCY]
[COURT.]
[RICHARD STEINBAUGH ISSUES]
[FASHION EMBROIDERY INC. STOCK]
[TO MURRAY GARDNER. M. GARDNER]
[SIGNS PROMISSORY NOTE FROM]
[FASHION EMBROIDERY INC. IN]
[FAVOR OF JOLENE RUNNER, PAYMENT]
[BY U.S. MAIL BEGIN TO JOLENE]
[RUNNER, RICHARD STEINBAUGH BUYS]
[EXEMPT PROPERTY.]
[(SEPTEMBER 1983--DECEMBER 1983)]
[]

EXHIBIT 25 PAGE 376

EXHIBIT 20 PAGE 371

EXHIBIT 21 PAGE 372

EXHIBIT 10 PAGE 232-234 LN 16-31

EXHIBIT 12 PAGE 274-276 LN 16-31

[]
[SCHEME 4: DEFRAUD MILLAN RE:]
[CERTIFIED TANK MFG. INC.]
[MARSHA BENNETT CONCEALS FROM]
[MILLAN THAT THE STATE OF]
[CALIFORNIA FRANCHISE TAX BOARD]
[HAS SUSPENDED CERTIFIED TANK]
[]

[MFG. INC. FROM DOING BUSINESS]
[IN CALIFORNIA ON (JANUARY 4,]
[1984).]
[]

EXHIBIT 8 PAGE 198 PAR 12

[]
[SCHEME 3: DEFRAUD MILLAN]
[RE: FASHION EMBROIDERY STOCK]
[FASHION EMBROIDERY INC.]
[SHAREHOLDERS MEETING CALLED]
[MARSHA BENNETT, MURRAY GARDNER]
[RICHARD MILLAN ELECTED TO BOARD]
[OF DIRECTORS AND AS OFFICERS OF]
[FASHION EMBROIDERY INC. MILLAN]
[VOTES 15,000 SHARE PROXY FOR]
[SHARES OWNED BY COLLEEN STEIN-]
[BAUGH AND 30,000 SHARE PROXY]
[FOR SHARES OWNED BY THEDA AND]
[MATTHIAS WILLIAMS.]
[(JANUARY 11, 1984)]
[]

EXHIBIT 2 PAGE 18 LN 1-24

EXHIBIT 17 PAGE 368

EXHIBIT 18 PAGE 369

[]
[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]

[]
[SCHEME 4: DEFRAUD MILLAN RE:]
[CERTIFIED TANK MFG. INC.]
[MARSHA BENNETT CONCEALS FROM]
[MILLAN HER TRANSFER OF OWNER-]
[SHIP INTEREST IN THE PROPERTY]
[430 LECOUVIER STREET, WILMINGTON]
[CALIFORNIA, THE SITE OF CERT-]
[IFID TANK MFG. INC. TO DOUGLAS]
[MARTIN AS A GIFT ON JANUARY 16,]
[1984 WHILE SHE IS MARRIED TO]
[MILLAN AND ABOUT TO RE-MARRY]

[MILLAN IN THE CRYSTAL CATHEDRAL]
[ON (JANUARY 21, 1984)]
[JANUARY 16, 1984]
[]

SEE EXHIBIT 3 THIS DOCUMENT

[]
[MARSHA BENNETT AND MILLAN WERE]
[RE-MARRIED ON JANUARY 21, 1984]
[AT THE CRYSTAL CATHEDRAL]
[]

DECLARATION OF RICHARD MILLAN

PAGE 21 PAR 71

EXHIBIT 8 PAGE 197 PAR 11

[]
[RICHARD MILLAN PURCHASED]
[30,000 SHARES OF FASHION]
[EMBROIDERY STOCK FROM THEDA AND]
[MATTHIAS WILLIAMS FOR \$100,000.]
[(FEBRUARY 1984)]
[]

EXHIBIT 67 PAGE 508 PAR 14-15

EXHIBIT 68 PAGE 511 PAR 9-10

[]
[SCHEME 4: DEFRAUD MILLAN RE:]
[CERTIFIED TANK MFG. INC.]
[MARSHA BENNETT CONCEALS FROM]
[MILLAN THE OWNERSHIP INTEREST]
[OF DOUGLAS MARTIN IN CERTIFIED]
[TANK MFG. INC. AND MILLAN TRIES]
[TO LEARN OF THAT INTEREST BY]
[A LETTER FROM ERIC DEAN TO]
[DOUGLAS MARTIN ON FEBRUARY 24,]
[1984]
[]

EXHIBIT 26 PAGE 377

[]
[SCHEME 4: DEFRAUD MILLAN RE:]
[CERTIFIED TANK MFG. INC.]
[MARSHA BENNETT CONCEALS FROM]
[MILLAN THE ACQUISITION OF THE]
[PROPERTY ON SIGSBEE AVENUE]
[WILMINGTON, CALIFORNIA IN]
[JOINT OWNERSHIP WITH DOUGLAS]
[]

[MARTIN. QUIT CLAIM DEED]
[NO. 84-617223 DATED MARCH 19,]
[1984 AND RECORDED ON MAY 23,]
[1984 IN THE LOS ANGELES COUNTY]
[RECORDERS OFFICE.]
[]

SEE EXHIBIT 13 THIS DOCUMENT

[]
[SCHEME 1 DEFRAUD BANKRUPTCY]
[COURT:]
[RICHARD STEINBAUGH FILES]
[CHAPTER 7 BANKRUPTCY PETITION]
[IN UNITED STATES BANKRUPTCY]
[COURT APRIL 12 1984 WITHOUT]
[DISCLOSING THE FRAUD HE HAS]
[COMMITTED ON THE COURT.]
[(APRIL 12, 1984)]
[]

EXHIBIT 5 PAGE 104 PARA B-3/O
EXHIBIT 5 PAGE 104 PARA B-2/O
EXHIBIT 5 PAGE 104 PARA B-2/T
EXHIBIT 5 PAGE 103 PARA (M)
EXHIBIT 5 PAGE 102 PARA (T)
EXHIBIT 5 PAGE 95
EXHIBIT 5 PAGE 92 PARA 14AB
EXHIBIT 5 PAGE 105 PARA
EXHIBIT 5 PAGE 87 PARA M
EXHIBIT 5 PAGE 90 PARA 9
EXHIBIT 5 PAGE 73 THROUGH 109
EXHIBIT 5 PAGE 88 PARA 1(D)

[]
[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]
[]

[]
[SCHEME 1 DEFRAUD BANKRUPTCY]
[COURT:]
[COLLEEN STEINBAUGH CONSULTS]
[WITH BANKRUPTCY ATTORNEY]
[EUGENE DUNNINGTON AND BEGINS]
[]

[THE FILING OF HER PETITION]
[UNDER CHAPTER 7, US BANKRUPTCY]
[CODE, (ON MAY 10, 1984)]
[]

EXHIBIT 4 PAGE 60 PAR 15(a)

[]
[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]
[]

[]
[SCHEME 4: DEFRAUD MILLAN RE:]
[CERTIFIED TANK MFG. INC.]
[MARSHA BENNETT CONCEALS FROM]
[MILLAN THE LAWSUIT FILED]
[AGAINST HER AND DOUGLAS MARTIN]
[BY LLOYD R. HAFFENER IN LOS]
[SUPERIOR COURT SOC 73644 FOR]
[BREACH OF CONTRACT, SPECIFIC]
[PERFORMANCE, CONSTRUCTIVE TRUST]
[& DECLARATORY RELIEF ON (JUNE]
[20, 1984)]
[]

EXHIBIT 12 THIS DOCUMENT

[]
[SCHEME 3: DEFRAUD MILLAN RE:]
[FASHION EMBROIDERY INC. STOCK]
[MARSHA BENNETT DEMANDS MILLAN]
[BUY 15,000 SHARES OF FASHION]
[STOCK FROM HER MOTHER COLLEEN]
[STEINBAUGH AND JOIN HER IN]
[CONCEALING THE SALE OF THE]
[THE STOCK FROM THE UNITED]
[STATES BANKRUPTCY COURT]
[(JANUARY 1984--JULY 24, 1984)]
[]

DECLARATION OF RICHARD MILLAN

PAGE 34 PARA. 104

PAGE 35 PARA. 111

PAGE 38 PARA. 127

[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]
[]

[]
[SCHEME 3: DEFRAUD MILLAN RE:]
[FASHION EMBROIDERY INC. STOCK]
[MARSHA BENNETT AND MURRAY]
[GARDNER ON JULY 23, 1984]
[SEND MILLAN A TELEGRAM CALLING]
[A BOARD OF DIRECTORS MEETING]
[AND A SPECIAL SHAREHOLDERS]
[MEETING ON JULY 25, 1984]
[(JULY 23, 1984)]
[]

DECLARATION OF RICHARD MILLAN
PAGE 38 PARA. 129
EXHIBIT 26 PAGE 377
DECLARATION OF MARSHA BENNETT
PAGE 43 LINES 4 THROUGH 9
DECLARATION OF PAUL SCHMIDT
OPPOSITION TO DEFENDANTS SUMMARY
JUDGEMENT MOTION EXHIBIT 6 P. 40.
[]

[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]
[VIOLATION OF TITLE 18 USC 1341]
[VIOLATION OF TITLE 18 USC 1343]
[]

[]
[SCHEME 3: DEFRAUD MILLAN RE:]
[FASHION EMBROIDERY INC. STOCK]
[MARSHA BENNETT DEMANDS MILLAN]
[BUY 15,000 SHARES OF FASHION]
[STOCK FROM HER MOTHER COLLEEN]
[STEINBAUGH AND OUTLINES AN]
[AGREEMENT WHEREBY MILLAN WILL]
[]

[GIVE THEM A PROMISSORY NOTE FOR]
[\$50,000.00 FOR THE 15,000]
[SHARES OF FASHION EMBROIDERY]
[INC., STOCK OWNED BY HER MOTHER]
[COLLEEN STEINBAUGH. MILLAN]
[SIGNS AND GIVES THE PROMISSORY]
[NOTE TO BENNETT.]
[(JULY 25, 1984)]
[]

DECLARATION OF RICHARD MILLAN
PAGE 38 PARA. 130

DECLARATION OF MARSHA BENNETT
PAGE 44 LINES 6 THROUGH 17

DECLARATION OF COLLEEN STEINBAUGH
PAGE 50 LINES 2 THROUGH 8

[]
[SCHEME 3: DEFRAUD MILLAN RE:]
[FASHION EMBROIDERY INC. STOCK]
[MARSHA BENNETT AND MURRAY]
[GARDNER VOTE MILLAN OUT OF]
[OFFICE ON JULY 25, 1984 AT]
[A BOARD OF DIRECTORS MEETING]
[AND A SPECIAL SHAREHOLDERS]
[MEETING ON JULY 25, 1984]
[(JULY 25, 1984)]
[]

DECLARATION OF MARSHA BENNETT
PAGE 43 LINES 4-8

DECLARATION OF RICHARD MILLAN
PAGE 39 PAR. 133-134

[]

[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]
[]

[]
[SCHEME 3: DEFRAUD MILLAN RE:]
[FASHION EMBROIDERY INC. STOCK]
[MARSHA BENNETT, MURRAY GARDNER,]
[BONNIE GARDNER AND COLLEEN]
[]

[STEINBAUGH TAKE CONTROL OF]
[FASHION AND CONVERT MILLAN'S]
[30,000 SHARES OF FASHION STOCK]
[TO THEIR OWN USE. MURRAY]
[GARDNER CLAIMS 66% OWNERSHIP OF]
[FASHION EMBROIDERY INC., AND]
[MARSHA BENNETT CLAIMS OWNERSHIP]
[OF 44% OF FASHION EMBROIDERY.]
[(JULY 25, 1984)]
[]

EXHIBIT 46 PAGE 437 HISTORY

[]
[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]
[]

[]
[SCHEME 3: DEFRAUD MILLAN RE:]
[FASHION EMBROIDERY INC. STOCK]
[MARSHA BENNETT, MURRAY GARDNER,]
[BONNIE GARDNER AND COLLEEN]
[STEINBAUGH TAKE CONTROL OF]
[FASHION EMBROIDERY INC.,]
[MARSHA BENNETT IS A DIRECTOR]
[AND IS THE CORPORATE SECRETARY]
[AND TREASURER. BENNETT KEEPS]
[THOSE OFFICES AND TITLES AND]
[NEVER RESIGNS ANY OF THEM AT]
[ANY TIME.]
[(JULY 25, 1984)]
[]

EXHIBIT 46 PAGE 437 HISTORY

EXHIBIT 53 PAGE 465

EXHIBIT 17 PAGE 368

EXHIBIT 2 PAGE 8 LINES 10-22

EXHIBIT 2 PAGE 18 LINES 7-21

EXHIBIT 34 PAGE 389

COURT R. 17 PAGE 4 PAR 13

COURT R. 17 PAGE 5 PAR 14

COURT R. 19 PAGE 4 PAR'S 13-14

EXHIBIT 9 PAGE 217 PAR 4

EXHIBIT 9 PAGE 218 PAR 7
EXHIBIT 9 PAGE 225 PAR 43
EXHIBIT 8 PAGE 203 PAR 34
EXHIBIT 67 PAGE 507 PAR 3-5
EXHIBIT 68 PAGE 511 PAR 3-5
EXHIBIT 65 PAGE 504 PAR 6

[]

[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]

[]

[SCHEME 5: DEFRAUD MILLAN RE:]
[FASHION EMBROIDERY INC.]
[OUT OF OWNERSHIP OF FASHION BY]
[FORCING SALE OF ASSETS BY]
[INTERNAL REVENUE SERVICE FOR]
[NON-PAYMENT OF TAXES]
[MARSHA BENNETT, MURRAY GARDNER,]
[BONNIE GARDNER AND COLLEEN]
[STEINBAUGH TAKE CONTROL OF]
[FASHION AND IMPLEMENT A PLAN]
[TO FORCE THE SALE OF FASHION]
[EMBROIDERY ASSETS BY THE U.S.]
[INTERNAL REVENUE SERVICE TO A]
[COMPANY THEY SET UP IN NEVADA]
[CALLED FASHION GROUP LTD.]
[CENTRAL TO THEIR SCHEME IS TO]
[NOT PAY FEDERAL EMPLOYMENT]
[TAXES AS THEY ARE DUE AND OWING]
[(JULY 25, 1984)]

DECLARATION OF RICHARD MILLAN
PAGE 42 PAR 150-155

[]

[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]

[VIOLATION OF SECURITIES LAWS]
[]

[]
[SCHEME 6 DEFRAUD COMMONWEALTH]
[FINANCIAL:]
[MARSHA BENNETT, COLLEEN STEIN-]
[BAUGH & RICHARD MILLAN SUED BY]
[COMMONWEALTH FINANCIAL FOR BAD]
[FAITH WASTE IN STATE COURT.]
[(SEPTEMBER 11, 1984)]
[]

EXHIBIT 73 PAGE 548

[]
[SCHEME 2 DEFRAUD BANKRUPTCY]
[COURT:]
[COLLEEN STEINBAUGH FILES]
[CHAPTER 7, U.S. BANKRUPTCY]
[PETITION ON SEPTEMBER 20, 1984]
[CONCEALS THE SALE OF HER 15,000]
[SHARES OF STOCK IN FASHION]
[EMBROIDERY INC., CONCEALS THE]
[PROMISSORY NOTE FOR \$50,000.]
[AND CONCEALS THE SALE AGREEMENT]
[WITH RICHARD MILLAN.]
[(SEPTEMBER 20, 1984)]
[]

EXHIBIT 4 PAGE 37 PARA B-3/B
EXHIBIT 4 PAGE 37 PARA B-2/O
EXHIBIT 4 PAGE 69 PARA T
EXHIBIT 4 PAGE 68 PARA M
EXHIBIT 4 PAGE 61 PARA 9
EXHIBIT 4 PAGE 58 PARA 7
EXHIBIT 4 PAGE 55 PARA
EXHIBIT 4 PAGE 59 PARA (A) (B)
EXHIBIT 4 PAGE 70 PARA (B)
EXHIBIT 4 PAGE 35 PARA
EXHIBIT 4 PAGE 37 PARA B-2/T
EXHIBIT 4 PAGE 37 PARA B-2/V

[]
[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]

[VIOLATION OF SECURITIES LAWS]
[]

[]
[SCHEME 5 DEFRAUD MILLAN AND]
[INTERNAL REVENUE SERVICE]
[MARSHA BENNETT, COLLEEN STEIN-]
[BAUGH, MURRAY GARDNER, BONNIE]
[GARDNER INTENTIONALLY WITHHOLD]
[PAYMENT OF \$13,086.23 IN]
[FEDERAL EMPLOYMENT TAXES]
[(SEPTEMBER 30, 1984)]
[]

EXHIBIT 58 PAGE 485

[]

[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]
[]

[]
[SCHEME 6: DEFRAUD COMMONWEALTH]
[FINANCIAL]
[COMMONWEALTH FINANCIAL PURSUES]
[COLLEEN STEINBAUGH, MARSHA]
[BENNETT & RICHARD MILLAN INTO]
[BANKRUPTCY COURT IN ADVERSARY]
[PROCEEDING LA 84-52804CA]
[(OCTOBER 18, 1984)]
[]

EXHIBIT 4 PAGE 49

[]
[MILLAN ANSWERS COMMONWEALTH]
[FINANCIAL ADVERSARY COMPLAINT]
[IN PROPRIA PERSONA.]
[(OCTOBER 1984)]
[]

DECLARATION OF RICHARD MILLAN
PAGE 40 PAR. 140

[]
[SCHEME 2: DEFRAUD BANKRUPTCY]
[COURT.]
[]

[MARSHA BENNETT ANSWERS]
[COMMONWEALTH FINANCIAL ADVER.]
[COMPLAINT USING ERIC DEAN,]
[MILLANS FRIEND AND LAWYER TO]
[REPRESENT HER AGAINST MILLAN'S]
[INTEREST IN THE BANKRUPTCY]
[COURT.]
[(OCTOBER 1984)]

EXHIBIT 4 PAGE 49
DECLARATION OF RICHARD MILLAN
PAGE 41 PAR'S 141-143

[]
[SCHEME 2: DEFRAUD BANKRUPTCY]
[COURT.]
[MILLAN LEARNS OF ERIC DEANS']
[DEANS TREACHERY AND DEMANDS]
[THAT ERIC DEAN WITHDRAW FROM]
[REPRESENTING BENNETT IN THE]
[BANKRUPTCY PROCEEDING ON DEC.]
[4, 1984. DEAN CONTACTS EUGENE]
[DUNNINGTON ATTORNEY FOR COLLEEN]
[STEINBAUGH AND ADVISES HIM OF]
[MILLAN'S DEMANDS TO REVEAL TO]
[THE COURT THE FRAUD THAT IS]
[BEING COMMITTED ON THE COURT.]
[DUNNINGTON PREPARES MOTION FOR]
[VOLUNTARY DISMISSAL OF PETITION]
[BY COLLEEN STEINBAUGH AND FILES]
[SAME ON DECEMBER 4, 1984.]
[(DECEMBER 2, 1984)]

DECLARATION OF RICHARD MILLAN
PAGE 41 PAR. 142

[]
[SCHEME 2: DEFRAUD BANKRUPTCY]
[COURT.]
[MILLAN IS SERVED BY DUNNINGTON]
[WITH STATE COURT COMPLAINT]
[IN THE UNITED STATES COURTHOUSE]
[IN AN EFFORT TO INTIMIDATE]
[MILLAN FROM ATTENDING THE]
[BANKRUPTCY PROCEEDINGS THAT]

[MORNING EUGENE DUNNINGTON]
[ADVISES JUDGE ASHLAND THAT C.]
[STEINBAUGH HAS FILED A MOTION]
[TO VOLUNTARILY WITHDRAW HER]
[PETITION. JUDGE ASHLAND TELLS]
[DUNNINGTON THAT HE IS GOING TO]
[RULE AGAINST THE ADVERSARY]
[PROCEEDING. DUNNINGTON INSISTS]
[ON THE MOTION FOR VOLUNTARY]
[DISMISSAL OF THE PETITION.]
[(DECEMBER 4, 1984)]
[]

DECLARATION OF RICHARD MILLAN
PAGE 41 PAR 144
PAGE 42 PAR'S 145-146
EXHIBIT 4 PAGE 49

[]
[SCHEME 5 DEFRAUD MILLAN AND]
[INTERNAL REVENUE SERVICE]
[MARSHA BENNETT, COLLEEN STEIN-]
[BAUGH, MURRAY GARDNER, BONNIE]
[GARDNER INTENTIONALLY WITHHOLD]
[PAYMENT OF \$13,086.23 IN]
[FEDERAL EMPLOYMENT TAXES]
[(DECEMBER 31, 1984)]
[]

EXHIBIT 58 PAGE 485

[]

[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]
[]

[]
[SCHEME 7 DEFRAUD MILLAN BY]
[FILING FRAUDULENT 1099 TAX]
[FORMS WITH THE INTERNAL REVENUE]
[SERVICE AND THE STATE OF CALIF.]
[STATING NON-EMPLOYEE INCOME]
[BY MILLAN FOR THE TAX YEAR 1984]
[OF \$33,727.33 AND THEN ALTERING]

[THE FORM TO READ \$38,158.23]
[THEN SENDING THE FORMS BY U.S.]
[MAIL TO THE I.R.S. AND TO THE]
[STATE OF CALIFORNIA FRANCHISE]
[TAX BOARD.]
[(JANUARY 1985- APRIL 1985)]
[]

SEE EXHIBIT 7 ON PAGE 45
OPPOSITION TO DEFENDANTS MOTION
FOR SUMMARY JUDGEMENT

[]
[SCHEME 5 DEFRAUD MILLAN AND]
[INTERNAL REVENUE SERVICE]
[FASHION GROUP LTD. INCORPORATED]
[MARCH 7, 1985 IN STATE OF]
[NEVADA. NEVADA SECRETARY OF]
[STATE LISTS OFFICERS AS MURRAY]
[GARDNER PRESIDENT, MICHAEL P.]
[JESSICK SEC/TREASURER.]
[(MARCH 7, 1985)]
[]

EXHIBIT 58 PAGE 485

[]

[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]
[]

[]
[SCHEME 5 DEFRAUD MILLAN AND]
[INTERNAL REVENUE SERVICE]
[MARSHA BENNETT, COLLEEN STEIN-]
[BAUGH, MURRAY GARDNER, BONNIE]
[GARDNER INTENTIONALLY WITHHOLD]
[PAYMENT OF \$1,580.00 IN]
[FEDERAL EMPLOYMENT TAXES]
[(JUNE 30, 1985)]
[]

EXHIBIT 58 PAGE 485

[]

[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]

[]
[SCHEME 5 DEFRAUD MILLAN AND]
[INTERNAL REVENUE SERVICE]
[MARSHA BENNETT, COLLEEN STEIN-]
[BAUGH, MURRAY GARDNER, GIVE TO]
[MICHAEL JESSICK POWER OF ATTY]
[OVER ALL OF FASHION OPERATIONS]
[WITHOUT NOTIFYING MILLAN OR]
[CALLING A SHAREHOLDERS MEETING]
[AS REQUIRED UNDER THE CORPORA-]
[TION BY-LAWS.]
[(DECEMBER 2, 1985)]

EXHIBIT 36 PAGE 392

[]
[SCHEME 5 DEFRAUD MILLAN AND]
[INTERNAL REVENUE SERVICE]
[MARSHA BENNETT, COLLEEN STEIN-]
[BAUGH, MURRAY GARDNER, BONNIE]
[GARDNER INTENTIONALLY WITHHOLD]
[PAYMENT OF \$17,679.76]
[FEDERAL EMPLOYMENT TAXES]
[(DECEMBER 31, 1985)]

EXHIBIT 58 PAGE 485

[]
[SCHEME 5 DEFRAUD MILLAN AND]
[INTERNAL REVENUE SERVICE]
[MURRAY GARDNER AND MICHAEL]
[JESSICK ENTER AGREEMENT ON THE]
[OWNERSHIP OF FASHION GROUP LTD]
[(MARCH 3, 1986)]

EXHIBIT 66 PAGE 505

[]

[VIOLATIONS OF RICO TITLE 18 USC 1962]

[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]

[]
[SCHEME 5 DEFRAUD MILLAN AND]
[INTERNAL REVENUE SERVICE]
[UDAY RAJ SAWHNEY THE PRESENT]
[HUSBAND OF MARSHA BENNETT MEETS]
[WITH MICHAEL JESSICK AND I.R.S.]
[(FEBRUARY 11, 1986)]

EXHIBIT 42 PAGE 407

[]

[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]

[]
[SCHEME 5 DEFRAUD MILLAN AND]
[INTERNAL REVENUE SERVICE]
[MARSHA BENNETT, COLLEEN STEIN-]
[BAUGH, MURRAY GARDNER, BONNIE]
[GARDNER INTENTIONALLY WITHHOLD]
[PAYMENT OF \$7,634.99]
[FEDERAL EMPLOYMENT TAXES]
[(MARCH 31, 1986)]

EXHIBIT 58 PAGE 485

[]

[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]

[]
[SCHEME 5: DEFRAUD THE U.S.]

[INTERNAL REVENUE SERVICE]
[BY CONCEALING THAT FASHION]
[GROUP LTD. WAS OWNED BY THE]
[SAME PEOPLE THAT PLANNED NOT TO]
[PAY THE \$66,000.00 OWED TO THE]
[I.R.S. BY FASHION EMBROIDERY]
[INC., AND CONCEALING THE FACT]
[THAT FASHION GROUP LTD. WAS]
[A FRONT FOR BENNETT, M. GARDNER]
[B. GARDNER, C. STEINBAUGH AND]
[MICHAEL JESSICK. THE ABOVE]
[CO-CONSPIRATORS SUCCEEDED IN]
[BUYING THE ASSETS OF FASHION]
[EMBROIDERY INC., AT A FORCED]
[U.S. INTERNAL REVENUE SALE FOR]
[AN AMOUNT OF LESS THAN \$11,000.]
[AND SUCCESSFULLY MAKING MILLANS]
[STOCK IN FASHION EMBROIDERY INC]
[WORTHLESS. AT NO TIME WAS]
[MILLAN EVER NOTIFIED OF THE]
[I.R.S. LIENS, SEIZURE, SALE OR]
[SUBSEQUENT PURCHASE BY FASHION]
[GROUP LTD.]

[(MAY 1987)]

[]
EXHIBIT 37 PAGES 393-395
EXHIBIT 39 PAGE 398
EXHIBIT 51 PAGE 461
EXHIBIT 57 PAGES 476-482
EXHIBIT 58 PAGES 483-486
EXHIBIT 59 PAGES 487-492
EXHIBIT 60 PAGES 493-496
EXHIBIT 41 PAGES 404-405
EXHIBIT 8 PAGE 212 PAR'S 66-67
EXHIBIT 67 PAGE 509 PAR 16
EXHIBIT 68 PAGE 512 PAR 11

[]
[SCHEME 5 DEFRAUD MILLAN AND]
[INTERNAL REVENUE SERVICE]
[MILLAN HAS LEARNED THAT MURRAY]
[GARDNER AND MICHAEL JESSICK]
[HAVE MADE FASHION GROUP LTD. A]
[NEVADA CORPORATION INTO A]

[DEFUNCT CORPORATION AND CREATED]
[A NEW CALIFORNIA CORPORATION]
[CALLED FASHION SPECIALTIES INC.]
[THE CALIFORNIA SECRETARY OF]
[STATE DOES NOT LIST ANY OFFICER]
[NAMES AS YET, HOWEVER THE AGENT]
[FOR SERVICE IS ONE NICOLAS]
[SANTANGELO AT 1278 GLENNEYRE]
[LAGUNA BEACH, CALIFORNIA.]
[THE ADDRESS ABOVE IS ALSO THE]
[ADDRESS FOR MICHAEL JESSICK]
[FASHION SPECIALTIES WAS INCORP-]
[ORATED ON (AUGUST 26, 1988).]

[]
[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]

[]
[SCHEME 7: DEFRAUD MILLAN BY]
[FILING FRAUDULENT 1099 TAX]
[FORMS WITH THE UNITED STATES]
[INTERNAL REVENUE SERVICE]
[AND THE STATE OF CALIFORNIA]
[THE REPERCUSSIONS FROM THE]
[FRAUDULENT FILING OF THE 1099]
[TAX FORM BY THESE DEFENDANTS]
[ARE CONTINUING TO THIS DAY. ON]
[AUGUST 14, 1988, MILLAN WAS]
[NOTIFIED BY HIS EMPLOYER THAT]
[THE STATE OF CALIFORNIA]
[FRANCHISE TAX BOARD HAD PLACED]
[A LIEN ON MILLAN'S WAGES FOR]
[\$4,196.49 BASED ON THE FILING]
[OF THE FASHION EMBROIDERY 1099]
[TAX FORM FOR THE TAX YEAR 1984.]
[(AUGUST 14, 1988)]

[VIOLATIONS OF RICO TITLE 18 USC 1962]
[RICO PREDICATE ACTS]
[VIOLATION RICO 1962 (d)]
[VIOLATION OF TITLE 11 U.S.C.]
[VIOLATION OF SECURITIES LAWS]
[VIOLATION OF TITLE 18 USC 1343]
[VIOLATION OF TITLE 18 USC 1341]
[]

[]
[SCHEME 5: DEFRAUD THE U.S.]
[INTERNAL REVENUE SERVICE]
[AND MILLAN BY NOW TAKING THE]
[ASSETS OF FASHION EMBROIDERY]
[INC., THAT WERE FRAUDULENTLY]
[OBTAINED THROUGH THE I.R.S.]
[SALE BY FASHION GROUP LTD., AND]
[NOW TRANSFERRING THOSE ASSETS TO]
[AN ENTITY CALLED FASHION]
[SPECIALTIES LTD. OWNED BY THESE]
[SAME DEFENDANTS AND CO-CONSPIR-]
[ATORS. MILLAN LEARNED OF THIS]
[FURTHER ASSET TRANSFER ON]
[SEPTEMBER 23, 1988. IT IS]
[CLEAR THAT THESE DEFENDANTS]
[ARE ATTEMPTING TO MAKE THEM-]
[SELVES JUDGEMENT PROOF.]
[(SEPTEMBER 23, 1988)]
[]

COURT DOCKET #62 FACING PAGE:

CIVIL ACTION NO. 87-2283 WJR (TX)

PLAINTIFF RICHARD MILLAN'S
NOTICE OF MOTION AND MOTION TO
RECUSE THE HON. WILLIAM J. REA
JUDGE OF THE UNITED STATES
DISTRICT COURT

AFFIDAVIT OF PREJUDICE

CERTIFICATE OF GOOD FAITH

FILED CONCURRENTLY WITH NOTICE
OF MOTION AND MOTION TO
DISQUALIFY AND RECUSE
ATTORNEY STEVEN LUBELL

DECLARATION OF RICHARD MILLAN

STATEMENT OF FACTS AND
POINTS AND AUTHORITIES

DATE: July 11, 1988

TIME: 10:00 A.M.

PLACE: COURTROOM 10

JUDGE: HON. WILLIAM J. REA

CONCURRENT MOTIONS

EXCERPTS FROM PROFESSOR BREWER'S
"Mandamus Power," Buffalo Law Review,
Vol. 31, 1982 at pages 68 through 70:

"One group that is not hesitant to file mandamus petitions, on grounds of delay or otherwise, is pro se litigants. Pro se petitions represented about one-half of all of those that were filed during these three years. There are probably various reasons to explain this. Such litigants undoubtedly have less stake in maintaining a favorable long-term relationship with a judge than does an attorney, so perhaps they have less inhibition about using a procedure that might offend the district judge. Secondly, such litigants are generally considered extremely litigious and willing to file numerous legal papers. Moreover, they are probably less familiar with normal modes of procedure and consequently would not view an interlocutory petition to the appellate

court as particularly extraordinary. Finally, most of these pro se petitions are filed by prisoners who have initiated habeas corpus or 28 U.S.C. § 2255 petitions, or civil rights actions under 42 U.S.C. § 1983. Often, these end up being filed in great numbers in a few districts, thereby causing delay and leading to mandamus petitions. This delay is undoubtedly exacerbated by some degree of dislike for this barrage on the part of the judges in those districts.

In any event, the most important point is not the precise reason for this large number of pro se petitions, but the fact that it exists. Removing these pro se petitions gives a better picture of the number of mandamus petitions filed by attorneys. The attorney-filed petitions are the primary concern of this Article since their numbers, more

than pro se petitions, are likely to be influenced by the standards for entertaining mandamus petitions established by the courts.

This does not mean, however, that pro se petitions should be ignored entirely. A significant percentage of them can best be described as incomprehensible or frivolous. But of those I examined, forty petitions were complaining of the district court's failure to act. Of these, fifty percent (twenty) were denied as moot, the court having taken the action or being about to do so. Another twenty-five percent (ten) of this group, received some implicit promise of relief: one was denied on the condition that the district court act by a certain date, and the other nine were denied without prejudice to their renewal within a certain period of time (thirty, sixty,

or ninety days). Presumably, the message to the district court was fairly clear. The remaining twenty-five percent (ten) were simply denied. Once again it is established that the filing of a mandamus petition is an effective avenue for claims of delay, and in this instance, in a very large number of cases. The mandamus power viewed in its total breadth provides an institutional control on district judges' failure to act within reasonable time periods. This is especially true for prisoner petitioners, an area in which such control is particularly necessary."

MERCURY SERVICE, INC. and
Mercury Refueling, Inc.
Plaintiffs,

v.

ALLIED BANK OF TEXAS, Defendant
No. CV 85-4503 WJR

United States District Court
C.D. California.

August 14, 1987

Cite as 117 F.R.D. 147
(C.D. Cal. 1987)

"... Rea, J., held in part: ". . .

"III. SANCTIONS FOR THE FILING OF
ELDRED'S DECLARATION

"Pursuant to Federal Rule of
Civil Procedure 11, plaintiffs
request sanctions of \$74,915.39
against the defendant and its
counsel for the filing of the
Eldred Declaration. They claim
this sum represents the fees for
the discovery they would have

avoided had Mr. Eldred and the bank been initially candid.

A. Rule 11 Sanctions

"Rule 11 requires parties or attorneys to file pleadings, motions and other papers that are "well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and ... not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." If a party or his counsel files a paper in violation of this Rule, the Rule further provides that "the court ... shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may

include an order to pay to the other party ... the reasonable expenses incurred because of the filing of the ... paper, including a reasonable attorney's fee."

"[9] Under Rule 11, sanctions are appropriate if, measured objectively, a motion or paper is frivolous, legally unreasonable, or without factual foundation. Zaldivar v. City of Los Angeles, 780 F.2d 823 (9th Cir. 1986). Subjective good faith is not a defense to a Rule 11 motion. Id. at 829 (quoting with approval Schwarzer, Sanctions Under the New Federal Rule 11 - A Closer Look, 104 F.R.D. 181, 187 (1985): "There is no room for a pure heart, empty head defense under Rule 11.") Instead, the rule creates a new "affirmative duty of investigation

both as to law and as to fact before motions are filed." Golden Eagle Distributing Corp. v. Burroughs Corp., 801 F.2d 1531, 1536 (9th Cir. 1986).

"[10] A district court has a mandatory duty to impose sanctions for a violation of Rule 11, though the court has discretion on the appropriate amount or nature of the sanction. Golden Eagle Distributing Corp. v. Burroughs Corp., 801 F.2d at 1538; Eastway Constr. Corp. v. City of New York, 762 F.2d 243, 254 n. 7 (2d Cir. 1985) ("Unlike the statutory provisions that vest the district court with 'discretion' to award fees, Rule 11 is clearly phrased as a directive. Accordingly, where strictures of the rule have been transgressed it is incumbent upon

the district court to fashion proper sanctions.")

"[11] A basic purpose of Rule 11, as the Ninth Circuit and the Advisory Committee which drafted the Rule have observed, is to "reduce frivolous claims, defenses or motions' and to deter 'costly meritless maneuvers,' ... [thereby] avoid[ing] delay and unnecessary expense in litigation." Golden Eagle Distributing Corp. v. Burroughs Corp., 801 F.2d at 1536; Advisory Committee Note, 97 F.R.D. 165, 192 (1983). While expediting litigation is a basic purpose of Rule 11, it is not the sole purpose. In appropriate circumstances, a district court may impose a punitive sanction for the filing of a paper that lacks factual foundation and is intended

to mislead the Court and opposing parties, even if the paper does not significantly delay proceedings, because of the disrespect shown the judicial process.

"Defendant argues that a court may not award sanctions for a merely punitive purpose, but is limited to imposing a sanction that will compensate the opposing party for the harm inflicted by conduct that violates Rule 11. Defendant cites In re Itel Securities Litigation, 596 F.Supp. 226, 234 (N.D. Cal. 1984) which states:

"Rule 11 contemplate[s] reimbursement for the expenses necessarily incurred because of the misconduct. [It] do[es] not contemplate an award of punitive sanctions. In other words, in making an award pursuant to ... Rule 11, the Court can only award fees and sanctions for expenses

incurred in responsive or defensive actions."

"Defendant further relies on a Ninth Circuit Court of Appeals decision, In re Matter of Yagman, 796 F.2d 1165 (9th Cir.), amended on other grounds, 803 F.2d 1085 (9th Cir. 1986). Defendant's reliance on In re Yagman is misplaced, however. In that case, the Ninth Circuit only held that "When the sanctions award is based upon attorney's fees and related expenses, ... [r]ecovery should never exceed those expenses and fees that were reasonably necessary to resist the offending action." 796 F.2d at 1184-85 (emphasis added). In making this observation, the Ninth Circuit implied an assumption that sanctions under Rule 11 other than

an award of the attorney's fees generated in opposing a frivolous action or motion may be appropriate. This is the logical reading of Rule 11, which states that a court may impose "an appropriate sanction, which may include ... the reasonable expenses incurred because of the filing of the ... paper, including a reasonable attorney's fee" (emphasis added). The implication is that an award of attorney's fees is one, but not the only sanction that a court may impose.

"Defendant's counsel attempted to mislead the Court into finding that In re Yagman holds broadly "recovery should never exceed those expenses and fees that were reasonably necessary to resist the offending action." Counsel further

declined to cite the substantial authority running contrary to In re Itel. While this in itself is not sanctionable conduct, Golden Eagle Distributing Corp., 801 F.2d at 1541-42, it is not conduct appreciated by the district courts.

"There is substantial authority within the Ninth Circuit holding that Rule 11 does contemplate an award of punitive sanctions. This is the position of a district court judge in the Northern District of California, Judge Schwarzer. Schwarzer, Sanctions Under the New Rule 11--A Closer Look, 104 F.R.D. 181, 185 (1985); Kendrick v. Zanides, 609 F.Supp 1162, 1173 (D.C.Cal. 1985); Huettig & Schromm v. Landscape Contractors Council, 582 F.Supp. 1519 (N.D.Cal. 1984), aff'd 790

F.2d 1421 (9th Cir. 1986);
Heimbaugh v. City & County of San
Francisco, 591 F.Supp. 1573
(N.D.Cal. 1984). The approach to
Rule 11 outlined by Judge Schwarzer
in his Federal Rules Decisions
article has been generally held
persuasive by the Ninth Circuit.
See In re Yagman, 796 F.2d at
1182-85 (not discussing whether
Rule 11 sanctions are punitive in
nature, but generally approving
Judge Schwarzer's article).
Furthermore, one scholar has
observed that Judge Schwarzer's
punitive approach to Rule 11 "is at
least partially consistent with the
... advisory committee's notes ...
"The words "sanctions" in the
caption, for example, stresses a
deterrent orientation in dealing
with improper pleadings, motions,

or other papers." Nelken,
Sanctions under Amended Federal
Rule 11--some "Chilling" Problems
in the Struggle between
Compensation and Punishment, 74
Georgetown L.J. 1313, 1324 (1986).

"Judge Schwarzer's punishment
view has support from several
reported decisions in which
district courts have imposed Rule
11 sanctions facially designed more
to punish the transgressor than to
compensate the opposing party for
wasted effort and associated costs
and attorney's fees. Such
sanctions have included paying
money into court, Barton v
Williams, 38 Fed.R. Serv.2d 966
(N.D. Ohio 1983), Dore v Schultz,
582 F.Supp. 154 (S.D.N.Y. 1984);
dismissal, Valle v. Taylor, 587
F.Supp. 514 (D.N.D. 1984); deeming

certain allegations of the complaint admitted, Johnson v Department of Health, 587 F.Supp. 1117 (D.D.C.1984); and placing a reprimand in the court's file on attorneys admitted to its bar, Allen v. Faragasso, 585 F.Supp. 1114 (N.D.Cal. 1984) (by Schwarzer, J.).

"Further support for a punitive view of Rule 11 can be found in Golden Eagle Distributing Corp. In that case, the Ninth Circuit reversed a district court's imposition of sanctions upon counsel who had argued a motion without revealing controlling adverse authority. A key fact in this outcome was the district court's overlooking whether the attorney knowingly misrepresented the law. The Ninth Circuit held

that "an earnest advocate exaggerating the state of the current law" should not be sanctioned under Rule 11. 801 F.2d at 1540. The Court implied, however, that sanctions against "the unscrupulous lawyer knowingly deceiving the court" are appropriate. Id.

"[12] B. The Court's Inherent Power to Sanction Bad Faith Conduct

"In addition to their authority under Rule 11, the federal court's have authority to impose sanctions under their "inherent powers" "which are necessary to the exercise of all others." Roadway Express, Inc. v. Piper, 447 U.S. 752, 764, 100 S.Ct. 2455, 2463, 65 L.Ed.2d 488 (1980); In re Yagman, 803 F.2d 1085.

Roadway Express and Ninth Circuit authority provide that a court may sanction "bad faith conduct under the court's inherent power, if [that is] found to be appropriate." In re Yagman, 803 F.2d at 1085; see Roadway Express, 447 U.S. at 766, 100 S. Ct. at 2464. Id. at 765, 100 S.Ct. at 2463. The Court observed that these inherent powers include but are not limited to the contempt sanction, "which a judge must have and exercise ... in maintaining the authority and dignity of the court." Id. at 764, 100 S.Ct. at 2463. Sanctioning a party or its counsel for the filing of false or seriously misleading affidavits is appropriate under these inherent powers, whether the Court makes a specific contempt finding or not,

to maintain the authority and dignity of the Court.

C. Sanctions Upon Allied Bank and Its Counsel Are Appropriate

"In arguing that the Eldred Declaration is not sanctionable under Rule 11, counsel for Allied Bank boldly states, "There is no false statement in the Eldred Declaration." Counsel is well aware, however, that, at a minimum, Mr. Eldred made one false statement in his Declaration - that he had personal knowledge of all the matters stated therein. In truth, he lacked personal knowledge of virtually every assertion in the Declaration.

"Defendant's counsel tries to convince the Court that Mr. Eldred's near total lack of knowledge on the matters in his

Declaration is unimportant by observing, "To the extent the statements in the Eldred Declaration were not based on his personal knowledge, they were based on the personal knowledge of others, such as in-house counsel, and the statements are accurate."

"Even assuming that all statements are true in the Eldred Declaration except Eldred's statement that he had personal knowledge of the matters stated, Rule 11 sanctions seem appropriate, though a smaller sanction would be in order than if some of the other statements are false, too. Rule 11 and the cases under it state that a court shall impose sanctions for filing a paper which is "without factual foundation." Zaldivar, 780 F.2d at 831. This Declaration at

least partially lacked factual foundation. It was clearly unethical for in-house counsel Charles Pickett to advise Mr. Eldred to sign the Declaration, and it was further unethical for the local attorneys appearing in this action to offer the Declaration in support of their Motion to Dismiss. In addition to being unethical, the filing of the Declaration put the plaintiffs to some unnecessary work. At a minimum, Mr. Eldred's Declaration misled the plaintiffs into believing that Mr. Eldred was the person within Allied Bank who should be deposed to discover the facts concerning the bank's contacts with California. Thus, the Declaration had the tendency to steer the defendants away from deposing the personnel who actually

had the relevant knowledge. Furthermore, in preparing this Declaration, defendants attempted to avoid the added effort of discovering who within Allied had personal knowledge of the relevant facts and preparing their (perhaps several) Declarations - leaving plaintiffs to ferret out who within the corporation had the relevant knowledge. Also, the Declaration had the effect of leading the Court and the plaintiffs to falsely believe that a high officer within Allied with an overview of the bank's operations personally knew that Allied had no contacts with California, and the plaintiffs had to expend effort to disprove this.

"In addition to the false representation of Eldred's personal knowledge, however, the Declaration

contains other misleading if not outrightly false statements. In his Declaration, Mr. Eldred stated that the bank has a philosophy of doing business locally with people who have local credit references. He added that the bank does not accept deposits or make loans in California and owns no real property here. These statements in their context imply that the bank has no contacts with California whatsoever. This is misleading. While the bank might not physically accept deposits or make loans in California, the bank has substantial loans to California businesses, has guarantees on large loans from California citizens, and has a profitable depository relationship with Customer Number One, a California business. While

the bank might not currently have fee simple title to real property in California, it has security interests in California real and personal property and will obtain fee simple title to California real property should parties default on certain loans. As for the bank's "philosophy" of doing only regional business, bank officers have made trips to California to service existing business relationships with California citizens and to encourage them to expand their business.

"[13] Pursuant to Rule 11 and its inherent powers, the Court finds that sanctions are appropriate both because the statement that Eldred had personal knowledge is false and because the representations about the bank's

California contacts are misleading. The Declaration is a paper filed without factual foundation that led to otherwise unnecessary inquiries and arguments by the plaintiffs. Furthermore, its filing warrants punishment to deter similar conduct that demonstrates disrespect for the dignity and authority of the courts."

FIRST AMENDMENT TO THE UNITED STATES
CONSTITUTION

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

FIFTH AMENDMENT TO THE UNITED STATES

CONSTITUTION:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

EXCERPT FROM REPORTER'S TRANSCRIPT OF
PROCEEDINGS:

"For the Court's record, plaintiff now submits (Exhibit C) which is an excerpt of pages 17 through 26 of the Reporter's Transcript of Proceedings of Monday, September 26, 1988:

"25. Reprinted in part starting from page 17, line 24 is the conversation between this Court and counsel as recorded by Sherrill Boutte, C.S.R.:

MR. MILLAN: Yes. Last week I received a telephone call from Mr. Scott -- from a Mr. Scott Gilmore from the law firm of Hill, Farrer & Burrill. He is the counsel for Bonnie and Marie Gardner and Fashion Embroidery.

This telephone call troubles me because it goes right to the fairness of these hearings.

Your clerk telephoned Mr. Lubbell, told him about these proceedings today.

THE COURT: Told him that we weren't going to go ahead with his motion.

MR. MILLAN: Let me --

THE COURT: I think is what he said. Go ahead.

MR. MILLAN: Let me tell you, please, what Mr. Gilmore relayed to me.

THE COURT: Now who is he?

MR. MILLAN: He is the counsel for Fashion Embroidery, Marie Gardner and Bonnie Gardner. He is a partner in the law firm of Hill, Farrer & Burrill.--

THE COURT: Okay, but what do they have to do with this case?

MR. MILLAN: They were parties here.

THE COURT: Are they parties now?

MR. MILLAN: They have not been. We have settled. We settled Friday.

THE COURT: All right.

MR. MILLAN: Mr. Gilmore advised me this: He advised me that he had received a telephone call from Mr. Lubbell earlier in the day. He advised me that Mr. Lubbell had been contacted by the court. He advised me that the court would not rule on the motions for summary judgment today.

He advised me the Court would set a briefing schedule for the motions to be rebriefed, which is what is happening now.

He advised me the Court was taking these actions because Richard Millan was in pro per and this Court did not want to be reversed by the Ninth Circuit. That's number three.

He also advised me that communications between Steven Lubbell and the Court was to remain confidential and Millan was not to be told about it. That's number four.

MR. LUBBELL: Your Honor, I object to this.

MR. MILLAN: Let me finish.

THE COURT: Let him have his say because we're going to set this record straight right now.

MR. MILLAN: That's all I've been asking is for fairness, so let me --

THE COURT: Go ahead, go ahead.

MR. MILLAN: That was the fourth one.

Now, I asked -- I was surprised. I was amazed by what he told

me. I asked him to repeat it. He repeated it three times.

I called him back the next day. I said, "Would you tell me again. I really want to get this clear. What did you tell me yesterday?" And he told me again.

That afternoon I called Marva Dillard, and this is what we talked about.

Number one, I said had the Court tried to communicate with plaintiff Millan. Ms. Dillard said no.

THE COURT: We'll find out in a minute.

MR. MILLAN: Number two --

THE COURT: As a matter of fact, let's stop right there. Here's my clerk. He's the one that made the call.

Harry, did you try to reach Mr. Millan?

THE CLERK (HARRY): No, I didn't.

THE COURT: No? All right, okay, then, that's correct.

MR. MILLAN: The second point was - that I asked her - was the hearing on September 26, 1988 still on calendar? Her answer: Yes, subject to change.

Then I asked her: Was there anything Millan should know about the hearing on September 26, 1988?

Answer, Marva Dillard: If there was something you should know, you will be contacted by the Court. Why do you ask?

Number four. My reply: I received a very strange message on the telephone regarding the 26th.

Marva Dillard: Was the call from the Court?

Millan: No.

Who was it from? Marva Dillard.

Millan: I can't say at this time. I wasn't sure what was going on.

Seven. Marva Dillard: If the Court has anything to say to you, it will contact you.

The Court didn't.

I came today -- I didn't know what was going on here.

THE COURT: Well, you know now, don't you?

MR. MILLAN: But that's not the point, your Honor.

THE COURT: All right.

MR. MILLAN: The point is --

THE COURT: What is your point?

MR. MILLAN: -- is that if -- if I am counsel of record in this case, which I am, then I am entitled to

whatever communication is issued from this Court to the parties.

THE COURT: All right. I am going to now, in rebuttal, first of all, ask my clerk what he did, because I cannot speak for him fully.

Harry, would you just tell us what you did with respect to advising these gentlemen about this matter this morning? I think my instruction to you was that the pleadings were so convoluted, and because we didn't find any opposition by Mr. Millan to the motion, I think you came to me and said what will we do, and I said: Well, look, even though he hasn't this opposition, I suppose we had better treat his cross-claim in some way as opposition to it, because if I don't treat it in that fashion, then the Ninth Circuit probably will say you should

have treated it as an opposition to the motion.

And then I said to you, I believe, that under these circumstances, I don't think the hearing should proceed on Monday. I think we better get this cleared up so that Mr. Millan can tell us Monday why he didn't file opposition rather than file his own cross-claim, and that because the pleadings were so confused, I asked you to advise counsel that we would not proceed with the hearing this morning but we would set another date for a hearing.

Isn't that about, in effect, what I told you?

THE CLERK (HARRY): That's my recollection of events.

THE COURT: Now, would you just advise us what it was you did after I talked to you about it?

THE CLERK (HARRY): What I did was call Mr. Lubbell and tell him that because there was a problem with motions not being responsive to each other that it was our intent to -- at the hearing to continue it to a later date in order to permit the parties to respond to each other.

Then I asked him if he had any strong objections to his motion being put off in that manner, inasmuch as it had not been responded to.

THE COURT: So apparently no one -- you didn't ask him to advise Mr. Millan of that, is that --

THE CLERK (HARRY): No, I didn't ask him to advise Mr. Millan. I also did not advise him to keep it confidential.

THE COURT: Well, all right, then I guess. Mr. Lubbell, why did you not -- why did you call the attorney

from Hill, Farrer's office and not call Mr. Millan?

MR. LUBBELL: I called Mr. Gilmore with the respect that for the last month, Mr. Millan has been telling Mr. Gilmore he's going to be dismissing some of the defendants that Mr. Gilmore is representing.

I, in contacting Mr. Gilmore with the respect that if he is not dismissed, he needs to participate in jury instructions. And I called him, and I have been calling him almost daily: Are you out, are you in, what are you doing? Because he's had this posture since the beginning of the case. We've never been quite sure what his position was.

I had told him I had received a telephone call -- this is in conversation now -- with respect to today's motion, that the Court asked me

if there would be an objection from me with respect to it being continued since we can't tell who's on first base with the papers. This is all in conversation now.

Mr. Gilmore -- we were talking about it and I said to Mr. Gilmore: I suppose that the reason that the Court's doing this is that Mr. Millan is pro per and that he does not want -- the Court would not want this and I don't want this having to go on and on and on to the Ninth Circuit. Mostly myself. It's becoming a very expensive burden to my clients.

There was no talk about this conversation being kept confidential. My concern today was coming in here today to find out what days we're to respond to the motions to.

THE COURT: Well, did you think about calling Mr. Millan?

MR. LUBBELL: No, I did not, your Honor. I thought if the court found it necessary -- this was a very --

THE COURT: Well, why would you contact the other attorney and not Mr. Millan?

MR. LUBBELL: I wasn't contacting him with respect to today's motion. I was contacting him whether "Are you out," because the jury instructions were due that day. I was Federal Expressing them to Mr. Millan.

This was general conversation.

THE COURT: Okay. Now, Marva, did you try to reach Mr. Millan? Somebody told me they tried to reach him.

THE CLERK (MARVA): Mr. Millan called me. However, at the time that he called me, I didn't know that tentatively it may be placed off. So

when he called me, I knew nothing about it, so that's --

THE COURT: Okay. Well, Mr. Millan, apparently there was a breakdown in communication somewhere along the line and you weren't told about what the Court was going to do today, so from that standpoint, I guess it's correct.

Now, I never advise anyone that this should be kept confidential. I mainly was concerned with letting, I guess, Mr. Lubbell know that we weren't going to rule on this motion today, and because your motion wasn't timely filed - at least in our opinion it wasn't - your motion couldn't be ruled on.

So I just assumed that you would both be here today, which you are, and we're going to go ahead and set up a briefing schedule. I don't see where anybody is hurt and why we're making

such a big deal out of this. I don't understand.

I guess, in looking back now, I suppose we should have called you and told you that the motion wouldn't be heard, but that apparently wasn't done. I guess I owe you an apology for not advising you of that fact. I guess we didn't do it.

MR. MILLAN: Your Honor, being in pro per in Federal Court is not a nasty word. Being in pro per is a right given to me by the Federal Constitution and by the Federal Rules of Civil Procedure.

THE COURT: All right. Well let's put that behind us. I know that.

MR. MILLAN: Mr. Lubbell uses pro per as a dirty word. It's not. We are entitled to be heard. We're entitled to fair treatment.

THE COURT: Of course you are.
There's no doubt about that.

MR. MILLAN: I have no
objection to rebriefing, to resetting,
to any of this. My concern was that --
was that your court was contacting
opposite counsel, was not contacting me.

THE COURT: Okay. Well,
that's correct. You should have been
advised as well. I think that's
correct. I accept that as a proper
complaint and we will see to it it
doesn't happen again.

California Rules of Professional
Conduct:

RULE 5-200. TRIAL CONDUCT

"In presenting a matter to a tribunal, a member:

(A) Shall employ, for the purpose of maintaining the causes confided to the member such means only as are consistent with truth;

(B) Shall not seek to mislead the judge, judicial officer, or jury by an artifice or false statement of fact or law;

(C) Shall not intentionally misquote to a tribunal the language of a book, statute, or decision;

(D) Shall not, knowing its invalidity, cite as authority a decision that has been overruled or a statute that has been repealed or declared unconstitutional; and

(E) Shall not assert personal knowledge of the facts at issue, except when testifying as a witness."

California Rules of Professional
Conduct:

RULE 5-220. SUPPRESSION OF EVIDENCE

"A member shall not suppress any evidence that the member or the member's client has a legal obligation to reveal or to produce."

California Rules of Professional
Conduct:

RULE 5-300. CONTACT WITH OFFICIALS

". . . . (B) A member shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before such judge or judicial officer, except:

- (1) In open court; or
- (2) With the consent of all other counsel in such matter; or
- (3) In the presence of all other counsel in such matter; or
- (4) In writing with a copy thereof furnished to such other counsel; or
- (5) In ex parte matters.

(C) As used in this rule, the phrase 'judge or judicial officer' shall include law clerks, research attorneys, or other court personnel who participate in the decision-making process."

California Rules of Professional
Conduct:

RULE 5-310. PROHIBITED CONTACT WITH
WITNESSES

A member shall not:

(A) Advise or directly or indirectly cause a person to secret himself or herself or to leave the jurisdiction of a tribunal for the purpose of making that person unavailable as a witness therein.

(B) Directly or indirectly pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case. Except where prohibited by law, a member may advance, guarantee, or acquiesce in the payment of:

(1) Expenses reasonably incurred by a witness in attending or testifying.

(2) Reasonable compensation to a witness for loss of time in attending or testifying.

(3) A reasonable fee for the professional services of an expert witness.

U.S. DISTRICT COURT MOTION HEARING ON
MAY 9, 1988:

On May 9, 1988, at a motion hearing in this Court,¹ (Appendix R, page A-107²), the following was reported by the court reporter.

Mr. Millan: "I have in many, many motions in front of this court asked this court to investigate the misconduct of Mr. Steven Lubell. Not only in----"

The Court: "You are going to have to take that to the State Bar. This

¹C.R. 51: M/O Plts motn for wvr of local rule 2.8.1 & motn to declar DENIED. Pltfs motn for certification under R-54 DENIED. Plts motn for writ of supersedeas DENIED. Crt allows pltf to complete depo of Marsha Bennett. Said depo shall be completed in 3 hrs. (Footnote not included in original text.) (5-9-88)

²See: Reporter's Transcript of Proceedings, page 8, lines 9-14.

court is not here to investigate attorneys in the way they practice law."

(Italics added.)

EXCERPTS OF COURT RECORD 62, PAGES 24
THROUGH 29, PARAGRAPHS 36-45:

36. Plaintiff contends that this Court is in error in several respects:

(1) The Local Rule 2.6.4 of the Central District of California mandates action to be taken when "any person" brings to the attention of the Court the "unprofessional conduct of an attorney practicing before it.

LOCAL RULE 2.6.4:

"Disciplinary Investigations. The Standing Committee on Discipline shall investigate any charge or information, whether referred by one of the judges or otherwise coming to its attention, that any attorney has been guilty of unprofessional conduct-----".

37. Plaintiff further contends that this Court is duty-bound to prevent the misconduct that has been brought to its attention by this Plaintiff.

"COURT'S ABILITY TO REGULATE THE BAR--It is well recognized that a federal district court has the inherent authority and responsibility to regulate and supervise the bar practicing before it." Fred Weber, Inc. v. Shell Oil Co., 566 F.2d 602 (8th Cir 1977); Hull v. Celanese Corp., 513 F.2d 568 (2nd Cir. 1975).

38. Attorney Steven Lubell by his actions has violated the rules of this Court and the California State Bar Rules and California Business and Professions Code 6068(d).

Rules of Professional Conduct (In General)

Rule 7-105: In presenting a matter to a tribunal, a member of the State Bar shall:

(1) Employ, for the purpose of maintaining the causes confided to him such means only as are consistent with the truth, and shall not seek to mislead the judge, judicial officer or jury by an artifice or false statement of fact or law. A member of the State Bar shall not intentionally misquote to a judge or judicial officer the language of a book, statute or decision; nor shall he with knowledge of its invalidity and without disclosing such knowledge, cite as authority a decision that has been overruled or a statute that has been repealed or declared unconstitutional. A member of the state bar shall refrain from asserting his personal knowledge of the facts at issue, except when testifying as a witness.

(2) Disclose, unless privileged or irrelevant, the identities of the clients he represents.

Rule 7-107. Contact with Witnesses

A member of the State Bar shall not:

(A) Suppress any evidence that he or his client has a legal obligation to reveal or produce.-----"

39. In California the Business and Professions Code spells out the attorney candor much more clearly. Section 6068(d) says that an attorney has the duty not to mislead the judge or judicial officer with a false statement of fact or law. An Appeals court has interpreted the law to include an obligation to alert the court when false information is communicated."

40. Further attorney Steven Lubell has violated the American Bar Association's Model Rules of Professional Conduct:

"Under the ABA model rules, "it is professional misconduct for a lawyer to...engage in conduct involving dishonesty, fraud, deceit or misrepresentation [or to] engage in conduct that is prejudicial to the administration of justice." ABA Model Rule 8.4(c), (d). The U.S. Court of Appeals for the Federal Circuit has also said, "Distortion of the record, by deletion of critical language in quoting from the record, reflects a lack of the candor required by the Model Rules of Professional Conduct, Rule 3.3 (1983)." Amstar Corp. v. Envirotech Corp. (Fed. Cir. 1984) 730 F.2d 1476, 1486.

In Amstar, Envirotech lawyers, on appeal, distorted a quotation from the

prosecution file in a patent infringement case, then presented an estoppel argument based on that distortion. For sanctions, the court of appeals made Envirotech pay twice the amount of Amstar's costs. 730 f.2d at 1486.

Similarly, Rule 3.4 of the Model Rule (entitled Fairness to Opposing party and Counsel") admonishes lawyers to compete fairly and forbids the unlawful obstruction or concealment of material facts."

41. The disqualification and withdrawal of attorney Steven Lubell is mandatory in California under Rule of Professional Conduct 2-111(b)(2)

"Withdrawal is mandatory in California under Rule of Professional Conduct 2-111(b)(2) if an attorney knows or should know that his continued

representation of a client will result in a violation of the rules or the State bar Act. Presenting false testimony violates rule 7-105(1) and Business and Professions Code Section 6068(d), which require an attorney to utilize only procedures that are consistent with truth, and Section 6128(a), which prohibits practicing any deceit on the court or other party."

42. In this instant action attorney Steven Lubell has knowingly allowed his client to perjure herself and has taken no action to prevent the perjury. In a similar case (Comm. on Professional Ethics and Conduct of the Iowa State Bar Ass'n v. Crary (1976) 245 N.W.2d 298, 306):

"To the disappointment of the Iowa Supreme, he did not try to persuade his client to correct her testimony or not

to lie again, advise the senior partner about her lying or withdraw from the case, However, as soon as Crary's partner confirmed his suspicions that all was not pure and true, he withdrew the firm as attorney of record. The court concluded that by failing to stop Curtis from lying, Crary knowingly violated his duty as an attorney to employ only means that are consistent with truth. His "vice" was not in failing to disclose the truth, "but in participating in the corruption of the fact-finding system by knowingly permitting" Curtis to lie." Comm. On Professional Ethics and Conduct of the Iowa State Bar Ass'n v Crary, (1976) 245 N.W.2d 298, 306. For this transgression and for assisting his client (who later became Mrs. Crary) in nullifying a child custody decree, Crary's license was revoked.

court reporter present. Lubell asked Millan to wait for the Court Reporter and Millan waited for an extended period and no court reporter ever showed up. Millan left Lubell's office.

Millan contends that there was never any deposition intended of Millan and Millan bases this on the following.

Immediately after leaving Lubell's office, Millan telephoned the Law Office of Mr. Scott Gilmore, the other defense counsel in this case. Millan, spoke to Mr. Gilmore and asked him if he had been noticed by Lubell of the deposition of Millan. Mr. Gilmore searched his files and found that no notice of the deposition had been received at his office from Lubell and that he would have certainly attended Millan's deposition if he had been aware of such a deposition.

Millan also cannot find any record of the above Notice of Deposition on file in the Court Docket.

Lubell made Millan attend a fictional deposition and made him travel some 40 miles to his office and 40 miles back to Millan's office in Orange County California on a wild goose chase.

2. On May 1988, during the trial setting conference hearing, the Hon. Judge William Rea set the original trial date of this case for September 15, 1988. When Millan heard the judge announce the date, Millan told Judge Rea in the presence of opposing counsel and in open court that Millan and his family had planned to be in Seoul, Korea for the Olympics and since the trip had been planned for more than a year and airline and hotel reservations had been paid for, Millan requested that the Court set

the trial date for October 1988 on a date after Millan returned from the Olympics. Millan was granted the time to go to the Orient and attend the Olympics. Millan understood that there would be no hearing or motions in his absence since Millan was bound by the Local Court Rule 110-13 below.

Local Court Rule 110-13

Persons Appearing Without an Attorney --In Propria Persona
"Any person who is representing himself or herself without an attorney must appear personally for such purpose and may not delegate that duty to any other person, including husband or wife, or another party on the same side appearing without an attorney. Any person so representing himself without an attorney is bound by these rules of court and by the F.R.Civ.P. Failure to comply therewith may be ground for dismissal or judgment by default."

Millan prepared to leave for Korea and was completely surprised by a Motion For Summary Judgement filed by Lubell on September 2, 1988 and noticed for

September 26, 1988 during the middle of the Olympic Games.

Lubell deliberately filed the motion for summary judgment during that period of time so that Millan would either be forced to cancel his trip to the Olympics or be forced to substitute counsel in his place.

To compound his treachery, Lubell had an ex parte conversation with the law clerk "Harry" and concealed the fact from Millan, thus forcing Millan to attend the hearing on September 26, 1988 at a great loss in money and the cancellation of the trip to the Olympics.

3. During the period of time that Lubell has been in this case he has tried to show Millan in a false light before the Court. On September 26, 1988 as recorded in the Reporter's Transcript

of Proceedings, page 28 lines 14-25 and page 29 lines 1-18, Lubell attempted to show that false light in open court with the following result:

THE COURT: Now then, in reply, I'm going to give you, Mr. Lubell, until the 7th of October to file any additional documents you want to file.

MR. LUBBELL: Your Honor, could we have an order that those documents are to be served on my office on that day? I'm having a problem with documents being mailed from Santa Ana and getting them five or six days later from the day when they're supposed to be filed.

MR. MILLAN: Your Honor --

THE COURT: Well, just a minute now.

MR. MILLAN: I have one thing here to say. When my messenger went to

Mr. Lubbell's office a week ago to deliver the plaintiff's jury instructions, because we have had trouble like this before, I wanted a receipt for the jury instructions.

Mr. Lubbell's secretary refused to sign a receipt and Mr. Lubbell refused.

THE COURT: Well, why is that, Mr. Lubbell? What's wrong with acknowledging receipt of these papers?

MR. LUBBELL: Your Honor --

THE COURT: Well, look. I don't want to get involved with this.

MR. LUBBELL: That's the whole problem, we're going to get into --

THE COURT: Well, look. They are ordered to be delivered to your office and if I hear that you will not acknowledge receipt of them, then I am going to have to take some action against you or your law firm. I don't

know what it will be, but I'm going to
take some action against you.

EXCERPTS FROM COURT RECORD 87, PAGE 17,
PARAGRAPH 30 THROUGH PAGE 18, PARAGRAPH
31:

"30. Defendants Bennett and C.
Steinbaugh then go further to quote
California Architectural Bldg. Products
v. Franciscan Ceramics, Inc.,

"In California Architectural Bldg.
Products v. Franciscan Ceramics, Inc.,
818 F.2d 1466 (9th Cir. 1987) the 9th
Circuit Court of Appeals recognized that
RICO's continuity requirement is not
satisfied if plaintiffs have merely
alleged "a single fraud perpetrated on a
single victim. California Architectural
818 F.2d at 1469 (citing Schreiber 806
F.2d at 1388).

31. Defendants are DEAD WRONG, THE
NINTH CIRCUIT HAS FIRMLY REJECTED THE
SEDIMA FOOTNOTE AND CONTINUITY.

"Franciscan replies by
expanding the focus of inquiry. In
its view the alleged acts of mail

and wire fraud do not consitute [sic] a "pattern" of racketeering activity because they pertain to a single alleged criminal episode, the closing of Franciscan. A "pattern" Franciscan points out, requires "continuity plus relationship". Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, n. 14, 105 S.Ct. 3275, 3285 n.14, 87 L. Ed. 346 (1985) (quoting S.Rep. No. 617, 91st Cong., 1st Sess. 158 (1969)). Continuity is lacking, Franciscan insists, when acts pertain to a single criminal episode. Under these circumstances there is no ongoing illegal activity."

[5] "This approach is not without its appeal. However, the plain words of RICO preclude it. RICO defines "pattern of racketeering activity" without mentioning continuity. SEE 18 U.S.C. Section 1961(5) (emphasis added). There is no suggestion that the underlying illegal acts must be part of different criminal episodes. The dictum in Sedima is suggestive, but, without additional explication by the Supreme Court, we decline to follow its lead. (emphasis added). Nor does our recent decision in Schreiber Distributing Co. v. Serv Well Furniture 806 F.2d 1393 (9th Cir. 1986), require us to do so. There we held that plaintiffs failed to state a RICO claim by alleging acts of mail and wire fraud relating to the diversion of a single shipment of products. *Id.* at 1399. That was a single fraud perpetrated on a single victim. By

contrast, here the dealers allege that Franciscan made multiple fraudulent sales to them as multiple victims. California Architectural Bldg. Products v. Franciscan Ceramics, Inc., 818 F.2d 1466 (9th Cir. 1987)."

EXCERPTS OF COURT RECORD 12,³ page 33,
lines 6 through 27, and page 34, lines 1
through 15:

[A] "5. Defendant mislead Plaintiff
into believing that another attorney was
representing her who would file an
answer for her. On June 15, 1987
approximately 1:15 P.M. I telephoned Mr.
Scott Gilmore ESQ at (213) 620-0460.
(Exhibit 3). Mr. Gilmore informed me
that he was representing Colleen
Steinbaugh. He also told me he would be
speaking to Marsha Bennett regarding
representing her also. Mr. Gilmore
asked me if I had served Marsha Bennett
and I replied that I had not. Mr.
Gilmore told me he would ask Marsha
Bennett if he could accept service for
her. I then requested a date for the

³C.R. 12: Memo in oppos to motn to
dismiss and/or quash service,
insufficient service filed by deft
colleen Steinbaugh. pltf. (7-6-87).

early meeting of counsel. Mr. Gilmore set the date of June 24, 1987.

"On June 23, 1987 I again telephoned Mr. Gilmore to discuss the meeting of counsel set for the next day and I asked Mr. Gilmore if he had spoken to Marsha Bennett about authorizing him to accept service for her. Mr. Gilmore's reply was that he had been told that Marsha Bennett was not going to make things easy for you (Plaintiff) so you better serve her. Mr. Gilmore and Plaintiff agreed to file a stipulation with the Court requesting an extension of time for the early meeting of counsel. Plaintiff was to write the stipulation and send it to Mr. Gilmore for signature and Mr. Gilmore was to file it with the clerk. This was prepared June 23, 1987 (Exhibit 4.) Mr. Gilmore said he would file an answer for Colleen Steinbaugh before the deadline.

I received motion to dismiss on June 27, 1987 from a Steven K. Lubell which had been filed on June 24, 1987.

"Plaintiff contends based on information and belief that Defendant mislead Mr. Gilmore into believing he was representing her while she went shopping around to find an attorney that would contest the service of Complaint and Summons. This contention is made based on a telephone conversation with Mr. Gilmore on June 15, 1987 where he stated that "He would not stand for any hide and seek games," then he told Plaintiff that he would ask Marsha Bennett if he could accept service for her. . . ."

[B] On July 24, 1987, C.R. 33,⁴ at page 6, lines 12 through 27, and page 7, lines 1-2:

" . . . at 3:45 P.M. Plaintiff telephoned Mr. Scott Gilmore, the attorney for R. STEINBAUGH, M. GARDNER B. GARDNER, and FASHION EMBROIDERY INC. During the conversation Mr. Scott Gilmore informed Plaintiff that Mr. Steven Lubell, the attorney for COLLEEN STEINBAUGH, would be the attorney for MARSHA BENNETT when we served her. Mr. Gilmore related a conversation he had with a man who identified himself as the husband of MARSHA BENNETT. This husband of MARSHA BENNETT angrily instructed Mr. Gilmore not to speak to Plaintiff or communicate with Plaintiff in any way.

⁴C.R. 33: Note of mot & mot for lv to a/c; extn of discvy date; cont ptc. pltf, retbl 4/4/88 at 10am. pltf. (3/14/88)

43. In California, if the attorney, rather than the client, initiates the false testimony, the attorney may be prosecuted for subornation or solicitation of perjury. California Penal Code Section 127 provides that every person who willfully procures another person actually to commit perjury is guilty of subornation. If perjury is not actually committed, the person who unsuccessfully solicited the perjury may be guilty of solicitation of perjury. California Penal Code Section 653f(a).

44. In California, if the attorney does not attempt to stop or have the client correct perjured testimony and allows the trier of fact to rely on it, the attorney commits a crime. Business and Professions Code Section 6128(a) provides that an attorney who is "guilty

of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party" commits a misdemeanor. The punishment is imprisonment not exceeding six months, a fine not exceeding \$2,500.00 or both imprisonment and a fine.

45. Allowing a client to testify falsely constitutes deceit or collusion, a New York court in People v Salquerro (1980) 433 NYS 2d 711, 713, stated that an "attorney who knowingly presents perjured testimony is practicing a fraud on the tribunal." Collusion is a "secret combination, conspiracy or concert of action between two or more persons for fraudulent or deceitful purpose." Hone v Climatrol Industries Inc., (1976) 59 CA3d 513, 522, 130 CR 770.

PUBLISHERS NOTE:
PAGE (S) IN ORIGINAL MISSING

CALIFORNIA RULES OF PROFESSIONAL
CONDUCT, RULE 7-105:

Rule 7-105: In presenting a matter to a tribunal, a member of the State Bar shall:

(1) Employ, for the purpose of maintaining the causes confided to him such means only as are consistent with the truth, and shall not seek to mislead the judge, judicial officer or jury by an artifice or false statement of fact or law. A member of the State Bar shall not intentionally misquote to a judge or judicial officer the language of a book, statute or decision; nor shall he with knowledge of its invalidity and without disclosing such knowledge, cite as authority a decision that has been overruled or a statute that has been repealed or declared unconstitutional. A member of the state bar shall refrain

from asserting his personal knowledge of the facts at issue, except when testifying as a witness.

(2) Disclose, unless privileged or irrelevant, the identities of the clients he represents.

CALIFORNIA RULES OF PROFESSIONAL
CONDUCT, RULE 7-107:

Rule 7-107. Contact with Witnesses

A member of the State Bar shall
not:

(A) Suppress any evidence that he
or his client has a legal obligation to
reveal or produce.-----"

CALIFORNIA BUSINESS AND PROFESSIONS CODE

§ 6068(d):

§ 6068. Duties of attorney

"It is the duty of an attorney to do all of the following:

. . .

(d) To employ, for the purpose of maintaining the causes confided to him or her * * * such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

. . . ."

(Emphasis added.)

EXCERPTS FROM AMERICAN BAR ASSOCIATION'S
MODEL RULES OF PROFESSIONAL CONDUCT:

ABA Model Rule 8.4(c), (d):

"Under the ABA model rules, "it is professional misconduct for a lawyer to...engage in conduct involving dishonesty, fraud, deceit or misrepresentation [or to] engage in conduct that is prejudicial to the administration of justice."

The U.S. Court of Appeals for the Federal Circuit has also said, "Distortion of the record, by deletion of critical language in quoting from the record, reflects a lack of the candor required by the Model Rules of Professional Conduct, Rule 3.3 (1983)." Amstar Corp. v. Envirotech Corp. (Fed. Cir. 1984) 730 F.2d 1476, 1486.

In Amstar, Envirotech lawyers, on appeal, distorted a quotation from the prosecution file in a patent infringement case, then presented an estoppel argument based on that distortion. For sanctions, the court of appeals made Envirotech pay twice the amount of Amstar's costs. 730 f.2d at 1486.

Similarly, Rule 3.4 of the Model Rule (entitled Fairness to Opposing party and Counsel") admonishes lawyers to compete fairly and forbids the unlawful obstruction or concealment of material facts."

The California Business and Professions Code § 6128 states:

"§ 6128. Deceit, collusion, delay of suit and improper receipt of money as misdemeanor

Every attorney is guilty of misdemeanor who either: -

(a) Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party.

(b) Willfully delays his client's suit with a view to his own gain.

(c) Willfully receives any money or allowance for or on account of any money which he has not laid out or become answerable for.

Any violation of the provisions of this section is punishable by imprisonment in the county jail not

3

exceeding six months, or by a fine not
exceeding two thousand five hundred
dollars (\$2,500), or by both.

(Amended by Stats.1976, p. 5029, §
2.5.)"

HARASSMENT OF OPPOSING PARTY

THIS CASE HAS SEEN THE HARASSMENT OF THE OPPOSING PARTY BY DEFENDANT BENNETT AND COUNSEL STEVEN LUBELL GROW TO SUCH AN EXTENT THAT THE LOSSES OF TIME AND MONEY HAVE BECOME CONSIDERABLE AND THE PREJUDICE TO MILLAN'S CASE HAS GROWN WITH EACH INCIDENT. THE COURT HAS BEEN MADE AWARE OF EACH INCIDENT AND NO ACTION HAS BEEN TAKEN BY THE COURT.

1. On 1988, Lubell, served Millan with the following notice of deposition:

Steven K. Lubell
Attorney at Law
1234 Sixth Street, Suite 203
Santa Monica, California 90401
Telephone (213) 451-9904

Attorney for COLLEEN STEINBAUGH &
MARSHA BENNETT
UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

RICHARD MILLAN) CIVIL ACTION NO 87-2283
Plaintiff) NOTICE OF DEPOSITION
VS.)
MARSHA BENNETT)

ET AL.)
Defendants)
_____)

TO PLAINTIFF RICHARD MILLAN (IN PROPER)
NOTICE IS HEREBY GIVEN that pursuant to
Federal Rules of Civil Procedure Section
30(b), defendants, MARSHA BENNETT and
COLLEEN STEINBAUGH will take the
deposition of plaintiff RICHARD MILLAN,
on April 11, 1988 at 10:00 a.m. at the
Law Office of Steven K. Lubell located
at 1234 Sixth Street, Suite 203, Santa
Monica, California 90401. Please take
further notice that this deposition will
be stenographically recorded and will go
from day to day until completed.

Dated March 4, 1988.

STEVEN K. LUBELL
Attorney for Defendants
MARSHA BENNETT &
COLLEEN STEINBAUGH.

Millan appeared for the deposition
at the appointed time and there was no

Mr. Gilmore then told the "husband of MARSHA BENNETT" not to tell him how to practice law.

"16. On July 21, 1987, Plaintiff telephoned Mr. Steven Lubell and asked him if he was the attorney for MARSHA BENNETT. Mr. Lubell responded that he had been consulted by her but had not been retained. Mr. Lubell further stated that any information about him and MARSHA BENNETT was privileged."

[C] The privilege that Mr. Lubell was exercising was a privilege to conceal material witnesses and facts and to assist defendant Bennett in committing perjury in the following manner:

"24. On January 22, 1988 Mr. Lubell served on this Plaintiff his Supplementary Response to Interrogatories and Supplementary Answers to

Requests for Admissions of defendants
MARSHA BENNETT and COLLEEN STEINBAUGH.

"25. Directing this Court's attention to INTERROGATORIES PROPOUNDED BY PLAINTIFF RICHARD MILLAN TO DEFENDANT MARSHA BENNETT. SET 1 NUMBERS 1 TO 30. lodged with this Court.

At page 3 line 10.

2. State: (a) your name; (b) your present married name; (c) every name you have used in the past; (d) the dates you used each name.

ANSWER TO INTERROGATORY 2.

(a) MARSHA BENNETT

(b) OBJECTION. THIS REQUEST IS AN INVASION OF THE PRIVACY OF THIS ANSWERING DEFENDANT, COMPLIANCE WOULD BE OPPRESSIVE.

(c) MARSHA BENNETT,
MARSHA MILLAN

(d) WITH RESPECT TO THE
NAME MARSHA MILLAN FROM THE TIME PERIOD
OF JANUARY 1984 TO JULY 1984.

[D] "26. Directing this Courts
attention to the DEPOSITION OF MARSHA
BENNETT ON TUESDAY, FEBRUARY 23, 1988
AND LODGED WITH THIS COURT.

At page 10 lines 11 through 23.

By Mr. Millan

Q. STATE YOUR MARRIED NAME, PLEASE.

Mr. Lubell: OBJECTION ON THE
FIRST AMENDMENT RIGHT TO PRIVACY.

Mr. Millan: ARE YOU INSTRUCT-
ING YOUR WITNESS NOT TO ANSWER?

Mr. Lubell: ASKED AND AN-
SWERED ALREADY COUNSEL. I'VE ALREADY
INSTRUCTED THE WITNESS ON THE QUESTION.

Mr. Millan: WILL YOU CITE THE
WITNESS PLEASE. . . ."

[E] "27. Plaintiff directs the Court's attention to the date that Plaintiff first spoke to Mr. Lubell by telephone on July 21, 1987 and the date of the above deposition February 23, 1988. Seven full months have passed and still Plaintiff could not find out what Defendant MARSHA BENNETT'S true married name was. The question is WHY? What were they hiding?" The answer to that question is simply that Defendant Marsha Bennett and attorney Steven Lubell were hiding a material witness to this case. That witness was Uday Raj Sawhney. The concealment of this material witness completely prejudiced Millan's case.

The concealment of Uday Raj Sawhney also led to the decision by the United States District Court to deny Millan leave to file his first "and only" amended complaint. It was also instrumental in the decision of the

District Court to grant a partial summary judgment to the defendants in this case. Uday Raj Sawhney was hidden because he was the husband of Marsha Bennett. He was also the accountant and auditor that audited the books of defendant Fashion Embroidery Inc. He was also the person who negotiated the tax problems of Fashion Embroidery Inc. with the United States Internal Revenue Service after July 1984. Also the fact that Uday Raj Sawhney was the accountant hired by Millan to investigate the worth of Certified Tank Manufacturing Inc., a company owned by Bennett and offered for sale to Millan by Bennett. Bennett and Lubell concealed the facts that Uday Raj Sawhney had complete access to all the books and financial records of Fashion Embroidery Inc. after July 1984. In the following paragraphs, Millan will outline for this Court the path that

this concealment and perjury took. Millan will be quoting from C.R. 33, supra.

"28. Plaintiff found out why on February 25, 1988 why defendant MARSHA BENNETT and her counsel Steven Lubell were trying to hide her true married name."

[F] "29. PLAINTIFF RESPECTFULLY REQUESTS THIS COURT TO REVIEW THE FOLLOWING FOR OBSTRUCTION OF THE PROCESS OF THIS COURT, PERJURY AND SUBORNATION OF PERJURY BY DEFENDANT MARSHA BENNETT AND HER COUNSEL STEVEN LUBELL."

"30. Both Defendant MARSHA BENNETT and her counsel signed the Responses to Interrogatories and Request for Admissions served on Plaintiff on January 22, 1988. Further Mr. Lubell was present at

the Deposition of MARSHA BENNETT and allowed her to perjure herself. Mr. Lubell knew that the testimony that MARSHA BENNETT was giving in her deposition was not the truth and Mr. Lubell knew the name of a person who had knowledge and possession and of the existence of documents that had been subpoenaed and still he and his client have refused to produce them.

[G] "31. Directing this Court's attention to the DEPOSITION OF MARSHA BENNETT ON TUESDAY, FEBRUARY 23, 1988 AND LODGED WITH THIS COURT.

At page 28 lines 19 through 23.

By Mr. Millan

Q. DO YOU KNOW OF ANY PERSONS THAT HAVE RECORDS OF FASHION EMBROIDERY, INCORPORATED, OTHER THAN MURRAY GARDNER, BONNIE GARDNER, FASHION EMBROIDERY, INCORPORATED, OR RICHARD MILLAN?

A. NO. [MARSHA BENNETT]

"32. ATTORNEY STEVEN LUBELL HAS CLAIMED THAT TO GIVE PLAINTIFF THE TRUE MARRIED NAME OF DEFENDANT MARSHA BENNETT IS AN INVASION OF PRIVACY. THE TRUE FACTS ARE THAT ATTORNEY STEVEN LUBELL HAS BEEN HIDING UDAY RAJ SAWHNEY AND DOCUMENTS FROM PLAINTIFF AND ALLOWING DEFENDANT MARSHA BENNETT TO COMMIT PERJURY IN THESE COURT PROCEEDING. WHEN PLAINTIFF LEARNED THE TRUE MARRIED NAME OF DEFENDANT MARSHA BENNETT, THE NATURE OF THE MISCONDUCT BY ATTORNEY STEVEN LUBELL WAS MADE VERY CLEAR.

"33. Plaintiff has been trying for months to obtain the financial records, stock registers, books of accounts, customer files and lists, computer print outs of defendant FASHION EMBROIDERY INC. Defendant MARSHA BENNETT IS THE

CORPORATE SECRETARY AND TREASURER OF defendant FASHION EMBROIDERY INC., in March of 1986, Attorney Karen Donahoe of the Law firm of Mayer and Glassman subpoenaed the records and stock registers from defendant FASHION EMBROIDERY INC., for use in the divorce trial of MILLAN V. MILLAN the above records were turned over to MARSHA BENNETT AND HER ATTORNEYS BY DEFENDANT MURRAY GARDNER AND NEVER RETURNED TO THE CORPORATION BY DEFENDANT MARSHA BENNETT. DEFENDANT MARSHA BENNETT DENIES HAVING THE RECORDS.

"34. Plaintiff learned on March 4, 1988 that UDAY RAJ SAWHNEY, the current husband of defendant MARSHA BENNETT was the certified public accountant of defendant FASHION EMBROIDERY INC. U.R. SAWHNEY NOT ONLY AUDITED THE BOOKS AND RECORDS OF DEFENDANT FASHION EMBROIDERY,

BUT HE ALSO WAS INSTRUMENTAL IN REPORT-
ING THE FINANCIAL CONDITION OF DEFENDANT
FASHION EMBROIDERY INC. TO FINANCIAL
INSTITUTIONS AND CREDIT REPORTING
AGENCIES SUCH AS DUN AND BRADSTREET
CORPORATION. MR. SAWHNEY WAS ALSO
INSTRUMENTAL IN THE FRAUD INVOLVING THE
OWNERSHIP OF STOCK IN DEFENDANT FASHION
EMBROIDERY INC. PLAINTIFF BY THIS
MOTION INTENDS ALSO TO GIVE NOTICE TO
MR. U.R. SAWHNEY THAT A SUBPOENA FOR ALL
RECORDS, FILES, CORRESPONDENCE, FINAN-
CIAL BOOKS, JOURNALS, STOCK LEDGERS,
COMPUTER PRINTOUTS AND ANY BUSINESS
DEALINGS IN WHATEVER FORM BETWEEN
FASHION EMBROIDERY INC., OR ANY PERSON
ASSOCIATED WITH FASHION EMBROIDERY INC.,
AND MR. UDAY RAJ SAWHNEY WILL BE ISSUED.
DEFENDANT MARSHA BENNETT'S DENIAL OF ANY
KNOWLEDGE OF ANY PERSON WHO HAD RECORDS
OF FASHION EMBROIDERY INC., WAS A CLEAR
ATTEMPT BY DEFENDANT MARSHA BENNETT AND

HER ATTORNEY STEVEN LUBELL TO HIDE THE
IDENTITY AND PARTICIPATION OF HER
HUSBAND UDAY RAJ SAWHNEY.

[H] "35. Counsel Steven Lubell on
November 12, 1987 was put on notice that
Plaintiff would amend his complaint to
add the married name of MARSHA BENNETT
and include the following persons and
entities; DOUGLAS MARTIN, MARTIN TANK
MFG. INC. and CERTIFIED TANK MANUFACTUR-
ING INC. Ever since that day Mr Lubell
has obstructed discovery and the pro-
ceedings of this Court by the following.

[I] "36. 1. Directing this Court's
attention to INTERROGATORIES PROPOUNDED
BY PLAINTIFF RICHARD MILLAN TO DEFENDANT
MARSHA BENNETT, SET 1 NUMBERS 1 TO 30,
lodged with this Court.

At page 3 line 10.

INTERROGATORY NO. 7

Have you ever been named as a defendant in a civil action in either State or Federal Courts? If so, for each action state:

(a) the city and state where the action was filed;

(b) the Court and case number;

(c) the names and ADDRESSES of each plaintiff;

(d) the nature of the complaint;

(e) the disposition or judgment of the action.

RESPONSE TO INTERROGATORY NO. 7 BY
MARSHA BENNETT.

(a) Answering party is attempting to obtain information requested. In the interest of discovery, answering defendant answers with the known information. Los Angeles, California.

- (b) Los Angeles Superior Court
- (c) Haffner v. Bennett
- (d) Business dispute
- (e) Case dismissed

"37. Directing this Courts attention to the DEPOSITION OF MARSHA BENNETT ON TUESDAY, FEBRUARY 23, 1988 AND LODGED WITH THIS COURT.

At page 10 lines 11 through 23.

By Mr. Millan

Q. (READING:)

"NO. 20. MARSHA BENNETT IS REQUESTED TO PRODUCE ANY AND ALL NAMES OF CASES IN WHICH SHE WAS EITHER A PLAINTIFF OR DEFENDANT IN EITHER STATE OR FEDERAL COURT IN WHATEVER JURISDICTION SUCH JURISDICTION SUCH CASE WAS FILED."

Mr Lubell: We have answered that question in one of your interrogatory requests. It's already been answered.

THE TRUE ANSWERS TO THE ABOVE ARE
AS FOLLOWS.

"38. COMMONWEALTH FINANCIAL V.
COLLEEN STEINBAUGH, MARSHA BENNETT AND
RICHARD MILLAN--LOS ANGELES SUPERIOR
COURT, CENTRAL DISTRICT C473743.
ACTION BROUGHT AGAINST COLLEEN
STEINBAUGH AND MARSHA BENNETT FOR
DESTROYING AND GUTTING A HOME
REPOSSESSED BY COMMONWEALTH FINANCIAL
FROM RICHARD AND COLLEEN STEINBAUGH
BEFORE RICHARD MILLAN HAD EVER MET
MARSHA BENNETT AND COLLEEN STEINBAUGH.
THIS CASE FOR BAD FAITH WASTE,
CONSPIRACY TO CAUSE BAD FAITH WASTE, AND
CONVERSION OF PERSONAL PROPERTY STILL
PENDING IN SUPERIOR COURT.

2. HARMIER V. DOUGLAS MARTIN,
MARSHA BENNETT AND CERTIFIED TANK MFG.

3. MARSHA BENNETT SAWHNEY V.
MAYER & GLASSMAN LAW CORPORATION. LOS

ANGELES SUPERIOR COURT C658214. THIS CASE FOR LEGAL MALPRACTICE WAS FILED BY MARSHA BENNETT IN AUGUST, 1987. HER ATTORNEY OF RECORD WAS STEVEN LUBELL. THE EXISTENCE OF THIS CASE RECORD WAS WITHHELD FROM PLAINTIFF IN BOTH THE INTERROGATORIES OF MARSHA BENNETT AND THE SUBPOENA FOR DOCUMENTS AT DEPOSITION SERVED ON MARSHA BENNETT ON FEBRUARY 8, 1988. THE WITHHOLDING OF THIS CASE FROM PLAINTIFF WAS DONE INTENTIONALLY BY ATTORNEY STEVEN LUBELL TO PREVENT PLAINTIFF FROM LEARNING THE TRUE MARRIED NAME OF DEFENDANT MARSHA BENNETT.

[J] "39. Directing this Court's attention to INTERROGATORIES PROPOUNDED BY PLAINTIFF RICHARD MILLAN TO DEFENDANT MARSHA BENNETT, SET 1 NUMBERS 1 TO 30, lodged with this Court.

At page 3 line 10.

INTERROGATORY NO. 27.

Within the past fifteen years have you owned any real estate with Douglas Martin? If so, for each real estate parcel state:

(a) the location of the real estate records;

(b) the ownership interest in each real estate parcel.

(c) the address of each parcel of real estate;

(d) the date each was purchased by you;

(e) the date each was sold by you;

(e) the type of deed transfer;

(f) the city and county of each real estate parcel.

ANSWER TO INTERROGATORY 27 BY
MARSHA BENNETT.

27. ANSWER: NO

[K] "PLAINTIFF DIRECTS THIS COURTS
ATTENTION TO THE FOLLOWING EXHIBITS:

40. 1. LOS ANGELES COUNTY DEED OF
TRUST DOCUMENT NO. 81-381907 (EXHIBIT 6)

THIS DEED OF TRUST READS IN
PART: "For value

Received, the undersigned
hereby grants, assigns and transfers to
DOUG MARTIN, An Unmarried Man and

MARSHA BENNETT, A Single Women,
as Joint Tenants all beneficial interest
under that certain Deed of Trust dated
April 13, 1981 executed by VICTOR M. MC
BETH, A Single Man and JANET L. BAILEY,
A SINGLE WOMAN.....

2. LOS ANGELES COUNTY DEED OF
TRUST DOCUMENT NO. 81-542869 (EXHIBIT 7)

THIS DEED OF TRUST READS IN
PART:

This deed of trust, made this
31 day of March, 1981 between LLOYD C.

DES ROCHES, a married man, and RUTH F.
DES ROCHES, a married woman, herein
called trustor, and DOUG MARTIN, An
Single Man and MARSHA BENNETT, A Single
Women, herein called beneficiary.....

3. LOS ANGELES COUNTY DEED OF
TRUST DOCUMENT NO. 81-253623 (EXHIBIT 8)

THIS DEED OF TRUST READS IN
PART:

This deed of trust, made this
10 day of December, 1980 between JUAN
JESUS RODRIGUEZ, a married man, and
MARIA D LA LUZ RODRIGUEZ, a married
woman, herein called trustor , and DOUG
MARTIN, An Single Man and MARSHA
BENNETT, A Single Women, herein called
beneficiary.....

4. LOS ANGELES COUNTY DEED OF
TRUST DOCUMENT NO. 80-1011418 (EXHIBIT
9)

THIS DEED OF TRUST READS IN
PART:

This deed of trust, made this 24 day of August, 1980 between JUAN RODRIGUEZ, a married man, and MARIA RODRIGUEZ, a married woman, herein called trustor , and DOUG MARTIN, An Single Man and MARSHA BENNETT, A Single Women, herein called beneficiary.....

5. LOS ANGELES COUNTY DEED OF TRUST DOCUMENT NO. 82-627625 (EXHIBIT 10)

THIS DEED OF TRUST READS IN PART:

This deed of trust, made this 9 day of November, 1981 between LUCAS VILLAPUEDA, a married man, and RUFINA VILLAPUEDA, a married woman, herein called trustor, and DOUG MARTIN, An Unmarried man and MARSHA BENNETT, A Single Women, herein called beneficiary.....

[L] "41. Directing this Court's attention to DEPOSITION SUBPOENA SERVED ON DEFENDANT MARSHA BENNETT ON FEBRUARY , 1988, SCHEDULE A.

At page 4 line 12

11. ANY AND ALL RECORDS SHOWING OWNERSHIP INTEREST IN CERTIFIED TANK MANUFACTURING INC., BY DOUGLAS MARTIN FOR ANY PERIOD OF TIME SINCE ITS INCORPORATION TO THE PRESENT DAY.

14. ANY AND ALL FINANCIAL RECORDS OF ANY AND ALL FINANCIAL TRANSACTIONS BETWEEN MARSHA BENNETT AND DOUGLAS MARTIN FOR THE PERIOD OF 1980 THOUGH 1988.

NO RECORDS AS REQUESTED ABOVE WERE PRODUCED AT DEPOSITION BY MARSHA BENNETT.

"42. Directing this Court's attention to the DEPOSITION OF MARSHA BENNETT

ON TUESDAY, FEBRUARY 23, 1988 AND LODGED
WITH THIS COURT.

At page 20 lines 1 through 5

By Mr. Millan

Q. DID YOU BRING ANY AND ALL
RECORDS SHOWING ANY OWNERSHIP INTEREST
IN CERTIFIED TANK MANUFACTURING
INCORPORATED, BY DOUGLAS MARTIN FOR ANY
PERIOD OF TIME SINCE ITS INCORPORATION
TO THE PRESENT DAY?

ANSWER By Marsha Bennett:

A. NO

"43. On or about October 3, 1980 a
truck was delivered to the facility of
MARTIN TANK MANUFACTURING INC., a
corporation owned by Marsha Bennett and
Douglas Martin, in Long Beach, Califor-
nia for repairs.

"44. On or about October 5, 1980 the truck was stolen from the facility of MARTIN TANK MANUFACTURING INC.,

"45. On October 27, 1981 Allianz Insurance filed a suit against MARTIN TANK MANUFACTURING INC. IN LOS ANGELES SUPERIOR COURT SOC 629064 asking for damages in the amount of \$83,555.56.

"46. On November 6, 1981 MARSHA BENNETT took the assets of MARTIN TANK MANUFACTURING INC., and using those assets incorporated CERTIFIED TANK MANUFACTURING INC., in a sham transaction left MARTIN TANK MANUFACTURING INC., a shell and judgment proof. (MARTIN TANK re-activated in February 1987)

"47. MARSHA BENNETT then hid DOUGLAS MARTIN from the world, she kept

all his bank accounts, insurance, property and expenses in her name. Joint wills were made out leaving each other the beneficiary in case of the death of either party. DOUGLAS MARTIN was hidden from his creditors and from any judgments by MARSHA BENNETT.

"48. The "Modus Operandi" of MARSHA BENNETT and DOUGLAS MARTIN was to manipulate companies, bank accounts, and properties while keeping the ownership interests of DOUGLAS MARTIN hidden from view.

"49. CERTIFIED TANK MANUFACTURING INC., was their vehicle for separating the unwary from their money. Anytime that trouble came the assets were removed and the company was left bare and judgment proof.

"50. CERTIFIED TANK MANUFACTURING INC., was allegedly sold by DOUGLAS MARTIN to TONY G. CARRASCO for a \$700,000.00 note. (SEE EXHIBIT 11) MARSHA BENNETT later was substituted as trustee on that note for DOUGLAS MARTIN. (SEE EXHIBIT 12)

"51. TONY G. CARRASCO went into default on the \$700,000.00 note given to MARSHA BENNETT for the sale of CERTIFIED TANK MANUFACTURING INC. On September 10, 1987, attorney Steven Lubell filed document No. 87-1456221 (SEE EXHIBIT 13) in the Los Angeles County Recorder's Office -- NOTICE OF DEFAULT "NOTICE IS HEREBY GIVEN: THAT MARSHA BENNETT is duly appointed trustee under a Deed of Trust dated JANUARY 16, 1985 executed by TONY G. CARRASCO and RUTH P. CARRASCO, husband and wife as joint tenants as trustor, to secure certain obligations

in favor of DOUGLAS HUGH MARTIN as Beneficiary....."

"52. Attorney Steven Lubell then caused to be filed as document no. 87-2004442 (SEE EXHIBIT 14) in the Los Angeles County Recorder's office -- the following document. NOTICE OF TRUSTEE'S SALE: YOU ARE IN DEFAULT UNDER A DEED OF TRUST, DATED JANUARY 16, 1985 UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

ON JANUARY 15, 1988, AT 1:00 P.M., MARSHA BENNETT as duly appointed Trustee under and pursuant to Deed of Trust recorded January 25, 1985 as instrument no. 85-92245 book n/a, of Official Records in the office of the County

Recorder of Los Angeles County, California executed by Tony G. Carrasco and Ruth P. Carrasco, husband and wife as joint tenants.

WILL SELL AT PUBLIC AUCTION TO HIGHEST BIDDER FOR CASH, CASHIER'S CHECK OR CERTIFIED CHECK, (Payable in lawful money of the United States) at the entrance to the building located at 1234 Sixth Street., City of Santa Monica, State of California. (This address is the office of Steven Lubell, the attorney of record for Marsha Bennett.)

all right, title and interest conveyed to and now held by it under said Deed of Trust in the property situated in said County and State described as

LOTS 3, 5, AND 7, IN THE RESUBDIVISION OF BLOCK 18, RANGE 5 WILMINGTON, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 6 PAGE 179 OF MAPS, IN

THE OFFICE OF THE COUNTY RECORDER OF
SAID COUNTY."(This
is the location of Certified Tank
Manufacturing, Inc.)

".....TRUSTOR OR RECORD OWNER: TONY G.
CARRASCO AND RUTH CARRASCO.
BENEFICIARY: DOUGLAS HUGH MARTIN."

"53. PLAINTIFF HAS SHOWN THIS COURT
THE OBSTRUCTION TACTICS OF MARSHA
BENNETT AND HER COUNSEL STEVEN LUBELL.
THEY DELIBERATELY FAILED TO PRODUCE THE
ABOVE DOCUMENTS AND MR LUBELL HID THE
FACT THAT HE WAS HOLDING THE SALE OF THE
PROPERTY OF CERTIFIED TANK MANUFACTURING
INC., AT HIS OFFICE ON JANUARY 15, 1988.
MR LUBELL AND MARSHA BENNETT WERE PUT ON
NOTICE ON NOVEMBER 12, 1987 THAT PLAIN-
TIFF WOULD NAME DOUGLAS MARTIN, MARTIN
TANK MFG. INC., CERTIFIED TANK MANUFAC-
TURING INC., IN HIS FIRST AMENDED

COMPLAINT AND THEY WITHHELD DOCUMENTS AND INFORMATION FROM PLAINTIFF."⁵

[M] 7. Defendant Bennett and her counsel Steven Lubell misrepresented material matters that led to the prejudicial denial of Millan's motion to amend the complaint in deposition, and interrogatories and Court, said action completely prejudiced Millan's case and resulted in the order denying Millan leave to amend complaint, continue discovery and pretrial conference dates.

9. The original state action in 1984 came as a cross-complaint to an action filed by Marsha Bennett against Millan. The basic causes of action were related to Breach of Contract, constructive

⁵ See: C.R. 33: paragraphs 24 through 27 and paragraphs 28 through 53.

trust, injunction, etc. In July of 1985, Millan was seriously injured and required hospitalization for a few months. On July 17, 1985 the Honorable Robert H. O'Brien granted Millan a 30 day leave to amend his second amended cross-complaint. [Exhibit 3] On July 26, 1985, Millan was involved in an industrial accident which required an operation and hospitalization for several months. In August of 1986 Millan was given a further extension to file the amended cross-complaint. Millan's injuries prevented him from filing the amended cross-complaint.

10. MR. LUBELL IS ALSO COUNSEL FOR BENNETT IN THE STATE CASE. HE WAS WELL AWARE OF WHAT HAD TRANSPIRED IN THE STATE CASE. THE FOLLOWING IS HOW MR. LUBELL MISREPRESENTED THOSE FACTS TO THE JUDGE REA IN U.S. DISTRICT COURT:

11. Mr. Lubell stated in his opposition to amend complaint "After two State Court Demurrers and two Amended complaints Plaintiff, Millan was left with a cross-complaint alleging four (4) causes of action against defendant, Bennett and the ten (10) additional defendants

12. THIS WAS TOTALLY FALSE, MILLAN WAS NOT THE PLAINTIFF IN THIS CASE, BENNETT WAS, AND THE ONLY PERSONS LEFT IN THE CASE WERE BENNETT, C. STEINBAUGH AND MARTIN. THE OTHER DEFENDANTS WERE OUT OF THE CASE. THE FOLLOWING PROPOSED DEFENDANTS DID NOT APPEAR IN ANY PRIOR CASE: UDAY RAJ SAWHNEY, MICHAEL JESSICK, DEBRA K. JESSICK, FASHION GROUP LTD. AND ANGELTOWN INC.[Exhibit 3]

13. Mr. Lubell stated to Judge Rea the following: "The amended complaint to

this action includes those names and many of the causes of actions that on a demurrer were denied with the exception of a breach of contract, a constructive trust specific performance and declaratory relief and all we are doing is rehash. It's already been decided in the state court.

The Court: " You mean there is a demurrer sustained without leave to amend?

Mr. Lubell: "Correct"

Mr. Millan: "No it's not correct"

Mr. Lubell: "Demurrer with 30 days to amend and the 30 days went beyond-----" [Exhibit 3].

The Court:"-----but what about the pendent claims for conversion and intentional infliction of emotional distress?

Why should they be addressed in this Rico case?"

Mr. Lubell: "They were dismissed in the state court action on the first demurrer and second demurrer. I don't believe they are proper here if they have already been dismissed based upon the same set of facts in the state court action."

The Court: "I don't really know why they were dismissed. I asked you: Were they dismissed or a demurrer sustained?"

Mr. Lubell: "Sustained"

The Court: "But you told me that it was sustained with leave to amend. Do you know why it was never amended?"

Mr. Lubell: "No.. Without being able to produce evidence in a summary judgment motion or without a trial, it is difficult to explain it in this type of a hearing."

14. THE TRUE FACTS ARE THAT MR. LUBELL REPRESENTS BENNETT IN THE STATE CASE, HAS ALL OF MILLAN'S MEDICAL FILES AND ALL OF THE STATE CASE RECORDS. Mr. Lubell is well aware that there are only three people remaining in the state case and that none of additional counts Millan is seeking to amend into his complaint have anything to do with the state case.

[N] 15. THE COURT STATED THAT THE AMENDMENT WAS UNTIMELY SINCE MILLAN KNEW OR SHOULD HAVE KNOWN OF THESE CLAIMS AND PARTIES AT THE TIME THE TIME HE FILED THE ACTION."

16. Mr. Lubell misrepresented the following facts to the Court:

The Court: "Well, how long do you believe that he's known of these persons other than the new name of his ex-wife?

Mr. Lubell: "Since May 29, 1985 when the second amended complaint was filed."

17. THE TRUE FACTS ARE THAT THE PROPOSED AMENDED COMPLAINT WAS FOR EVENTS THAT HAPPENED FROM 1985-1987, EVENTS THAT MILLAN HAD NO KNOWLEDGE OF UNTIL HE RECEIVED DOCUMENTS FROM DEFENDANT MURRAY GARDNER IN FEBRUARY OF 1988.

18. Millan had no knowledge that Bennett was even married until July 1987. There is no way that Millan could have known of her new husband Uday Raj Sawhney in May of 1985 since they were married sometime after March of 1986. There is no way that Millan could have known of the slander by Bennett in May of 1985 since it was not done until November of 1985 and remained unknown to Millan until the documents were sent to

him by STEVEN Lubell in November of 1987. The transactions between Martin and Bennett and Lubell were not until September of 1987.

[O] 19. LUBELL CONCEALED THE TRUE NAME OF BENNETT DURING THESE PROCEEDINGS FROM MILLAN BY CLAIMING FIRST AMENDMENT PRIVILEGE "INVASION OF PRIVACY" IN ORDER TO HIDE THE COMPLICITY OF HER NEW HUSBAND UDAY RAJ SAWHNEY, THE ACCOUNTANT FOR FASHION EMBROIDERY INC., A COMPANY ONE THIRD OWNED BY MILLAN.

[P] 20. Defendant Bennett and her counsel Steven Lubell misrepresented the record in the divorce proceedings of Millan vs. Millan (Bennett) and the state court action of Bennett vs. Millan and this prejudicial testimony was used by the District Court to base his decision to deny Millan's motion for

leave to amend, continue the discovery and pretrial conference dates.

21. At Court: "Mr. Lubell: There is a final order in the dissolution action saying that the parties shouldn't annoy or harass each other and it seems that this federal proceeding is just a way of circumventing the court order that they shouldn't have contact with each other. [Exhibit 1 page 39 paragraph L] misrepresentation is consistently being used by Mr. Lubell to portray Millan in a false light before the court.

22. THE TRUE FACTS ARE AS FOLLOWS: Bennett at her specific instruction entered upon the settlement agreement in Millan v. Millan a requirement that the litigation between the two parties should not be a part of the settlement

agreement. Mr. Lubell is the counsel for Bennett in the state court action and he is well aware of the following.

"Pursuant to oral stipulation of the parties, Petitioner, Marsha Bennett, and Respondent, Richard Millan, on March 27, 11986 entered into on that same date and time in Department 67 of the above-entitled Court, as reflected and set forth in the reporter's transcripts of proceedings, It is Further Ordered: (1) The Court Finds that Petitioner now owns certain assets as her sole and separate property, that Respondent disclaims and waives all right, title and interest in these assets, and therefore confirms them to Petitioner. These assets are as follows:"-----1. Any and all recovery awarded Petitioner Marsha Bennett in Los Angeles Superior Case No. C525013.

There was no such requirement advanced by Millan in his side of the divorce settlement. Bennett clearly intended to continue the litigation between the parties.

[Q] 22. Defendant Bennett and her counsel Steven Lubell concealed parties, documents, names and events from Millan in deposition, subpoenas to produce documents, interrogatories, that prejudiced Millan's attempt to discover the needed evidence and facts in this action. Said misconduct resulted in delaying the filing of the motion to amend, continue the discovery and pretrial conference dates.

23. On February 8, 1988, a Notice of Deposition and Subpoena for Documents was issued to defendant Bennett.

24. On February 23, 1988 at the deposition of defendant Bennett, the subpoenaed documents were not produced and Bennett was cited by the Court Reporter. Defendant Bennett perjured herself about the following material matters and concealed documents and concealed the direct involvement of attorney Steven Lubell in the affairs of Certified Tank. Mr. Lubell knew she was responding untruthfully and concealing documents and Mr. Lubell knew that Bennett was concealing his active involvement in the business affairs of Certified Tank, and in the business affairs of Douglas Martin. Mr. Lubell allowed his client to continue to respond untruthfully

Deposition of Marsha Bennett

Q. Did you bring any and all records showing any ownership interest

in Certified Tank Manufacturing, Inc, by Douglas Martin for any period of time since its incorporation to the present day?

A. No. [MARSHA BENNETT]

Q. Are there any such records?

A. Mr. Martin's records are his own records.

Deposition of Marsha Bennett

Q. "Did you bring any and all financial records of any and all financial transactions between Marsha Bennett and Douglas Martin for the period of 1980 through 1988?"

A. (Bennett) " I do not have any financial records of financial transactions between myself and Mr. Martin."

Deposition of Marsha Bennett

Q. "Miss Bennett, is Anthony Carrasco, Senior the President of Certified Tank Manufacturing Incorporated?"

A.(Bennett) "I have no knowledge of the workings of Certified Tank. I sold the company. It is their company to do with as they please: run it, operate it, and conduct themselves as they please.

24. THE CONCEALMENT OF THE RECORDS SUBPOENAED OF DOUGLAS MARTIN AND CERTIFIED TANK MFG. INC., AND THE DISCLAIMER OF KNOWLEDGE OF THE OPERATIONS OF CERTIFIED TANK MFG. BY BENNETT IN THE PRESENCE OF ATTORNEY LUBELL CAN ONLY BE CLASSIFIED A COMPLETE FALSEHOOD AND PERJURY. MILLAN DIRECTS THIS COURTS ATTENTION TO THE DOCUMENTS AT [EXHIBIT 4]. Lubell filed this document in the Los Angeles County Records office on

September 10, 1987, for Bennett in favor of Douglas Martin. Directing the Court's attention to [Exhibit 5]. This document was filed by Lubell on September 10, 1987 with the Los Angeles County Recorder for Bennett in favor of Douglas Martin. Further directing this Court's attention to [Exhibit 6]. This document filed by Lubell at the Los Angeles County Records office is a notice of sale of the property that Certified Tank Mfg. Inc., was located on, again for Bennett in favor of Douglas Martin. This sale was to be held on January 15, 1988 at 1234 Sixth Street., City of Santa Monica. 1234 Sixth Street is the address of Attorney Steven Lubell.

[R] 25. Deposition of Marsha Bennett

By Mr. Millan: Q. "Do you know of any persons that have records of Fashion

Embroidery, Incorporated, other that Murray Gardner, Bonnie Gardner, Fashion Embroidery, Inc., or Richard Millan?

Answer(Bennett) No.

26. THE TRUE FACTS ARE THAT DEFENDANT MARSHA BENNETT AND ATTORNEY STEVEN LUBELL CONCEALED THE FACT THAT MARSHA BENNETT'S HUSBAND UDAY RAJ SAWHNEY WAS THE ACCOUNTANT FOR FASHION EMBROIDERY INCORPORATED AND HE WAS RESPONSIBLE FOR THE FINANCIAL REPORTS AND RECORDS OF FASHION EMBROIDERY INC. THE CONCEALMENT OF AND THE PERJURY IN THE ABOVE PARAGRAPH OF MATERIAL FACTS WAS INSTRUMENTAL IN PREVENTING PLAINTIFF FROM COMPLETING HIS DISCOVERY IN THIS ACTION.

COURT RECORD 81 PAGES 2 THROUGH 22
DIRECT REBUTTAL TO THE TESTIMONY OF
MARSHA BENNETT AND THE LIST OF PREDICATE
RICO ACTS IN THIS CASE

STATEMENT OF FACTS

Defendants in this action in their reply memorandum to opposition to motion for summary judgment have demanded that plaintiff produce affidavits to support his claims. Plaintiff set forth his Declaration in his Motion for Summary Judgement and each and every statement of fact was with direct knowledge of the subject matter therein.

However, in order to put defendants' wild pleadings to rest and to put a finish to some of the implausible defenses that Mr. Lubell in his wisdom has put forth, Plaintiff places before this Court the Declarations of Murray R. Gardner, Bonnie Gardner, and Paul Schmidt in support of Plaintiff's Opposition to

Defendants' Motion For Summary
Judgement.

1. The following is a direct rebuttal to the testimony given by Defendant Marsha Bennett ("Bennett") in her declaration in support of her motion for summary judgment against plaintiff Richard Millan. Plaintiff was able to secure the following declarations from defendants Murray Gardner and Bonnie Gardner on September 23, 1988 and both declarations are attached herewith as Exhibits 1 and 2.

2. Defendants Murray Gardner ("M. Gardner") and Bonnie Gardner ("B. Gardner") were in the original group of incorporators of Defendant Fashion Embroidery Inc., ("Fashion"). They have been throughout the entire time since incorporation to the present day a part

of every event in the life of Fashion. M. Gardner has served as an officer, President, Vice President, Secretary and on the Board of Directors of Fashion. He has been a shareholder since the incorporation and better than any other person knows each and every event that has transpired within Fashion and is highly competent to testify at this trial about the business affairs of Fashion.

3. Defendant Bonnie Gardner is the wife of M. Gardner and also a shareholder of Fashion. B. Gardner has worked at Fashion in many capacities since its incorporation, and was privy to every meeting, decision and event in Fashion corporate life. B. Gardner participated in every meeting and discussion involving Marsha Bennett and Fashion business subsequent to the

departure of Plaintiff Richard Millan in July of 1984. See declaration of Murray Gardner page 2 paragraph 2.

[(2)] " I was president of Fashion Embroidery, Inc. after July 31, 1984 until the corporation's ultimate demise.

Plaintiff will take excerpts from the Declaration of Marsha Bennett and immediately follow with paragraphs from the Declarations of Murray Gardner and Bonnie Gardner.

Quoting excerpts from Declaration of Marsha Bennett ("Declare M.B.") 1 lines 16 through 19.

4. "The initial Directors of the Corporation were Theda Williams; Matthias L. Williams; Murray Gardner; Bonnie Gardner; Richard W. Steinbaugh; Colleen Steinbaugh."

5. "Colleen Steinbaugh is my natural mother. Richard W. Steinbaugh was my step-father. In or around May of 1983 my mother, Colleen Steinbaugh stated to me that she was contemplating a dissolution of her marriage to Richard W. Steinbaugh. My mother figured that half of the community estate belonged to her. On that basis I entered into an agreement with my mother, Colleen Steinbaugh in which I would give her \$25,000.00 in return for her 15,000 shares of stock in the corporation. I made this agreement with my mother with the full understanding that there had not been a final judgment, nor a final settlement of the community property in a dissolution of their marriage. [Declare. M.B. Page 2 lines 3 through 14].

Declaration of Murray Gardner page 3 para. 11 and 12.

[(11)]. "Marsha Bennett did not purchase Colleen Steinbaugh's shares of stock in Fashion Embroidery, Inc. in May of 1983 or at any time thereafter."

[(12)]. "Colleen Steinbaugh owned 15,000 shares of Fashion Embroidery Inc., stock on January 11, 1984."

Declaration of Bonnie Gardner page 3 para. 7 and 8.

[(7)]. "Marsha Bennett did not purchase Colleen Steinbaugh's shares of stock in Fashion Embroidery, Inc. in May of 1983 or at any time thereafter."

[(8)]. "Colleen Steinbaugh owned 15,000 shares of Fashion Embroidery Inc., stock on January 11, 1984."

6. [(9)]. "I never used any interstate telephone calls to discuss any part of any agreement with Richard Millan with respect to the 15,000 shares of stock. I never used the United

States mail to communicate any agreement or offer or any other communication with respect to the alleged sale and/or transfer of the 15,000 shares of stock. [Declare M.B. page 6 para. 9]

Declaration of Murray Gardner at page 3 para. 13,

"[(13)] "Marsha Bennett and I sent Richard Millan a Western Union telegram regarding the special director shareholders meeting scheduled on July 25, 1984. Also see Exhibit 3.

7. "On July 25, 1984, I called along with the other Directors, pursuant to the By-laws of the Corporation, a special meeting of the Board of Directors at which time I voted to remove Richard Millan as the Director of the Corporation. [Declare M.B. page 4 lines 4-8].

Declaration of Murray Gardner at
page 3 para. 13,

"[(13)] "Marsha Bennett and I sent Richard Millan a Western Union telegram regarding the special director shareholders meeting scheduled on July 25, 1984. Also see Exhibit 3.

8. On July 31, 1984, I resigned as the Director of the Corporation.[Declare M.B. page 4 lines 8-9].

Declaration of Murray Gardner at
page 2 paragraphs 3, 4, & 5.

[(3)]. "Marsha Bennett was an officer of Fashion Embroidery Inc., after July 31, 1984. (emphasis mine).

[(40)]. "Marsha Bennett did not resign as a director of Fashion Embroidery, Inc., on July 31, 1984 or at any other time thereafter." (Emphasis mine)

[(5)]. "Marsha Bennett did not resign as secretary/treasurer of Fashion Embroidery, Inc. on July 31, 1984 or at any other time thereafter.

Declaration of Bonnie Gardner at page 2 paragraphs 3, 4, & 5.

[(3)]. "Marsha Bennett was an officer of Fashion Embroidery Inc., after July 31, 1984. (emphasis mine).

[(40)]. "Marsha Bennett did not resign as a director of Fashion Embroidery, Inc., on July 31, 1984 or at any other time thereafter." (emphasis mine)

[(5)]. "Marsha Bennett did not resign as secretary/treasurer of Fashion Embroidery, Inc. on July 31, 1984 or at any other time thereafter.

9. Richard Millan filled out the certificate in his own hand, and he himself back dated the certificate to

May 13, 1983, which of course was the date of the transfer between my mother and myself. It is difficult for me to understand how Richard Millan can allege that my mother hid her alleged ownership of the 15,000 shares from the bankruptcy court, when Richard Millan himself acknowledged by the execution of this share certificate that the stock had previously been transferred to me over a year before my mother filed her bankruptcy petition. [Declare M.B. page 5-6 lines 28, 1-10.]

See Plaintiffs' Response to Defendants Marsha Bennett and Colleen S. Steinbaugh's Opposition to Motion to Recuse Judge William J. Rea and to Disqualify Attorney Steven Lubell, pages 15 through 18, at paragraphs 30 through 36 filed with this court on July 5, 1988.

See Declaration of Murray Gardner
page 3 para. 11 and 12.

[(11)]. "Marsha Bennett did not
purchase Colleen Steinbaugh's shares of
of stock in Fashion Embroidery, Inc. in
May of 1983 or at any time thereafter."

[(12)]. "Colleen Steinbaugh owned
15,000 shares of Fashion Embroidery
Inc., stock on January 11, 1984.

See Declaration of Bonnie Gardner
page 3 para. 7 and 8.

[(7)]. "Marsha Bennett did not
purchase Colleen Steinbaugh's shares of
of stock in Fashion Embroidery, Inc. in
May of 1983 or at any time thereafter."

[(8)]. "Colleen Steinbaugh owned
15,000 shares of Fashion Embroidery
Inc., stock on January 11, 1984.

10. "The allegations of the pleadings
state that I knew and assisted my
mother, Colleen Steinbaugh in defrauding

the United States Bankruptcy Court in that allegedly my mother did not list her 15,000 shares of stock in a bankruptcy petition that she filed with the Court on a date that I believe was September 10, 1984."

See Declaration of Murray Gardner page 3 para. 11 and 12.

[(11)]. "Marsha Bennett did not purchase Colleen Steinbaugh's shares of of stock in Fashion Embroidery, Inc. in May of 1983 or at any time thereafter."

[(12)]. "Colleen Steinbaugh owned 15,000 shares of Fashion Embroidery Inc., stock on January 11, 1984.

See Declaration of Bonnie Gardner page 3 para. 7 and 8.

[(7)]. "Marsha Bennett did not purchase Colleen Steinbaugh's shares of of stock in Fashion Embroidery, Inc. in May of 1983 or at any time thereafter."

[(8)]. "Colleen Steinbaugh owned 15,000 shares of Fashion Embroidery Inc., stock on January 11, 1984.

11. "As I have indicated, my mother, Colleen Steinbaugh, in May of 1983, had transferred her shares to me for \$25,000.00." [Declare M.B. page 7 lines 4-6.]

See Declaration of Murray Gardner page 3 para. 11 and 12.

[(11)]. "Marsha Bennett did not purchase Colleen Steinbaugh's shares of of stock in Fashion Embroidery, Inc. in May of 1983 or at any time thereafter."

[(12)]. "Colleen Steinbaugh owned 15,000 shares of Fashion Embroidery Inc., stock on January 11, 1984.

See Declaration of Murray Gardner page 3 para. 7 and 8.

[(7)]. "Marsha Bennett did not purchase Colleen Steinbaugh's shares of

of stock in Fashion Embroidery, Inc. in May of 1983 or at any time thereafter."

[(8)]. "Colleen Steinbaugh owned 15,000 shares of Fashion Embroidery Inc., stock on January 11, 1984.

12. "The allegations of the pleadings state that I caused and filed a fraudulent 1099 form with the Internal Revenue Service with respect to Richard Millan." [Declare M.B. page 7 lines 11-13.]

See Declaration of Murray Gardner 3 lines 14-16.

[(10)]. "Either Marsha Bennett, Uday Raj Sawhney or both, created the Fashion Embroidery, Inc. 1099 tax form in regards to Richard Millan for the tax year 1984." (Uday Raj Sawhney is Bennett's current husband).

See Declaration of Bonnie Gardner 3 lines 14-16.

[(10)]. "Either Marsha Bennett, Uday Raj Sawhney or both, created the Fashion Embroidery, Inc. 1099 tax form in regards to Richard Millan for the tax year 1984." (Uday Raj Sawhney is Bennett's current husband).

13. "I never had any control over the employees books and records during my tenure with the Corporation." [Declare M.B. page 7 lines 13, 14 and 15.]

See Declaration of Murray Gardner pages 2 & 3 paragraphs 6-9:

[(6)]. "Some time after July 31, 1984, I was instructed by Marsha Bennett to allow Uday Raj Sawhney to perform an "audit" of all of the books and records of Fashion Embroidery, Inc. Pursuant to Marsha Bennett's instructions, I allowed Mr. Sawhney access to all the books and records of Fashion Embroidery, Inc. To the best of

my recollection, Mr. Sawhney spent approximately one week at the Fashion Embroidery, Inc.'s offices reviewing all of the financial information. Mr. Sawhney subsequently issued a financial statement for Fashion Embroidery, Inc. for the period ending December 31, 1985."

[(7)]. "Following this work by Mr. Sawhney, and the issuance of the financial statement, I received telephone calls from time to time from Mr. Sawhney requesting information about the financial status of Fashion Embroidery, Inc. At all times, it was my understanding that Mr. Sawhney was seeking this information on behalf of Marsha Bennett and as her representative."

[(8)]. "Mr. Sawhney was also involved in representing Fashion

Embroidery, Inc., with the Internal Revenue Service during the year 1986."

14. "In any event, I had resigned from the Corporation on July 31, 1984; this date was the date prior to when the allegations of the filing of the 1099 form took place." [Declaration of Marsha Bennett page 7 lines 15-18.

Declaration of Murray Gardner at page 2 paragraphs 3, 4, & 5.

[(3)]. "Marsha Bennett was an officer of Fashion Embroidery Inc., after July 31, 1984. (emphasis mine).

[(4)]. "Marsha Bennett did not resign as a director of Fashion Embroidery, Inc., on July 31, 1984 or at any other time thereafter." (emphasis mine)

[(5)]. "Marsha Bennett did not resign as secretary/treasurer of Fashion

Embroidery, Inc. on July 31, 1984 or at any other time thereafter.

[(10)]. "Either Marsha Bennett, Uday Raj Sawhney or both, created the Fashion Embroidery, Inc. 1099 tax form in regards to Richard Millan for the tax year 1984."(Uday Raj Sawhney is Bennetts current husband).

Declaration of Bonnie Gardner at page 2 paragraphs 3, 4-6.

[(3)]. "Marsha Bennett was an officer of Fashion Embroidery Inc., after July 31, 1984. (emphasis mine).

[(4)]. "Marsha Bennett did not resign as a director of Fashion Embroidery, Inc., on July 31, 1984 or at any other time thereafter."(emphasis mine)

[(5)]. "Marsha Bennett did not resign as secretary/treasurer of Fashion Embroidery, Inc. on July 31, 1984 or at any other time thereafter.

[(6)]. "Either Marsha Bennett, Uday Raj Sawhney or both, created the Fashion Embroidery, Inc. 1099 tax form in regards to Richard Millan for the tax year 1984." (Uday Raj Sawhney is Bennett's current husband).

15. "The allegations of the pleadings state that I assisted and false and fraudulent United States Internal Revenue Service Tax Returns in behalf of the Corporation. I never had any thing to do with the filings of the Federal Tax Return for the Corporation. I have reviewed the evidence that was provided by the other defendants, besides my mother, this evidence clearly established that my name did not appear on any of the Federal or for that matter the State Tax Returns. This evidence, I understand, was all provided to Richard

Millan. [Declaration of Marsha Bennett
page 7 lines 19 through 28.

See Declaration of Murray Gardner
pages 2 & 3 paragraphs 6-9:

[(6)]. " Some time after July
31, 1984, I was instructed by Marsha
Bennett to allow Uday Raj Sawhney to
perform an "audit" of all of the books
and records of Fashion Embroidery, Inc.
Pursuant to Marsha Bennett's
instructions, I allowed Mr. Sawhney
access to all the books and records of
Fashion Embroidery, Inc. To the best of
my recollection, Mr. Sawhney spent
approximately one week at the Fashion
Embroidery, Inc.'s offices reviewing all
of the financial information. Mr.
Sawhney subsequently issued a financial
statement for Fashion Embroidery, Inc.
for the period ending December 31,
1985."

[(7)]. "Following this work by Mr. Sawhney, and the issuance of the financial statement, I received telephone calls from time to time from Mr. Sawhney requesting information about the financial status of Fashion Embroidery, Inc. At all times, it was my understanding that Mr. Sawhney was seeking this information on behalf of Marsha Bennett and as her representative."

[(8)]. "Mr. Sawhney was also involved in representing Fashion Embroidery, Inc., with the Internal Revenue Service during the year 1986."

[(10)]. "Either Marsha Bennett, Uday Raj Sawhney or both, created the Fashion Embroidery, Inc. 1099 tax form in regards to Richard Millan for the tax year 1984." (Uday Raj Sawhney is Bennett's current husband).

PLAINTIFF HAS ALLEGED THAT DEFENDANTS BENNETT, C. STEINBAUGH, M. GARDNER, B. GARDNER and aided and abetted by Michael Jessick and Uday Raj Sawhney "BUSTED OUT" FASHION EMBROIDERY INC., BY NOT PAYING THE EMPLOYMENT TAXES TO THE UNITED STATES INTERNAL REVENUE SERVICE THEREBY CREATING A SITUATION WHERE THE INTERNAL REVENUE SERVICE WOULD SEIZE THE ASSETS OF FASHION EMBROIDERY INC., AND AUCTION THOSE SAME ASSETS TO PAY THE TAX LIENS. THE DEFENDANTS IN THIS ACTION SET UP A NEVADA CORPORATION AND BEGAN NEGOTIATING WITH THE INTERNAL REVENUE SERVICE TO BUY THE ASSETS OF FASHION EMBROIDERY INC. FROM THE INTERNAL REVENUE SERVICE FOR AN AMOUNT APPROXIMATING \$10,000.00. THESE DEFENDANTS DID NOT REVEAL TO THE PLAINTIFF OR THE INTERNAL REVENUE SERVICE THAT THEY WERE THE SAME PEOPLE RESPONSIBLE FOR THE NON-PAYMENT OF TAXES

BY FASHION EMBROIDERY INC. THIS IN FACT
DEFRAUDED PLAINTIFF OUT OF HIS OWNERSHIP
OF FASHION EMBROIDERY INC., ASSETS AND
DEFRAUDED THE INTERNAL REVENUE SERVICE
OF MORE THAN \$50,000.00 IN TAX REVENUE.

The scheme worked as follows:

16. The defendants in this action
failed to pay the following taxes

September 30, 1984.....\$13,086.23

December 31, 1984.....\$13,666.62

September 30, 1985.....\$17,399.50

December 31, 1985.....\$17,679.76

See exhibit 60 page 495.

17. On November 14, 1985, Michael
Jessick wrote the following letter to

the Internal Revenue Service in part:
SEE Exhibit 4

"The Fashion Group Ltd. applies under section 6325 [b] of the Internal Revenue Code, for a certificate of discharge for the below listed property of Fashion Embroidery Inc., Taxpayer Identification Number 95-3364538, 8130 Rosecrans, Avenue, Paramount, California. List of Property
"....."

The Fashion Group Ltd. intends to purchase the above listed property at private sale subsequent to the approval of this petition. We shall open escrow as soon as this application is approved.

The above property is encumbered by a UCC filing lien in favor of Angeltown Inc., of which we have not received a copy of at the time of writing this petition. (Michael Jessick does not reveal to the Internal Revenue Service

that Angeltown Inc, is owned by him and his wife Debra K. Jessick.)

Fashion Group Ltd. Shall furnish appraisals [2] by approved appraisers.

Copies of all federal tax liens are attached to this petition. The amount of this sale will not cover the taxpayers total obligation to the Internal Revenue Service. See Exhibit 4.

18. On December 2, 1985 Murray Gardner gave to Michael Jessick a power of attorney over "ALL MATTERS CONCERNING FASHION EMBROIDERY, INC.," [Exhibit 36 page 392]

19. On March 3, 1986, Murray Gardner, the president of Fashion Embroidery Inc., and Michael Jessick entered into an agreement as follows: Subject: Letter of agreement between Michael P. Jessick and Murray R. Gardner, Jr. for

the purposes of establishing ownership of the stock of Nevada Corporation "The Fashion Group Ltd." and for the purchase of assets of California Corporation "Fashion Embroidery Inc."

1. Michael P. Jessick and Murray R. Gardner, Jr. shall each own one-half [1/2] of all issued stock of "The Fashion Group Ltd." [A Nevada Corporation].

2. That "The Fashion Group Ltd." a Nevada Corporation shall purchase the assets of "Fashion Embroidery Inc." A California Corporation as per agreement made with the U. S. Internal Revenue Service for this purchase.

3. That this document is to be replaced by a formal agreement to be drafted by an attorney.

Agreed this 3rd Day of March 1986, signed Murray R. Gardner and Michael P. Jessick." See Exhibit listed no. 66 and

located at Exhibit 3 this document,
marked defendants exhibit 4013.

20. Plaintiff Richard Millan, was never notified of the tax liens, nor was Millan ever notified of any Board of Directors meetings or shareholders meetings that would have had to have been called and held when items such as the power of attorney of Fashion affairs was given to Michael Jessick by Murray Gardner, and the sale of Fashion Embroidery Inc., Assets by the Internal Revenue Service.

21. All defendants concealed the tax liens, tax negotiations, power of attorney to Michael Jessick, agreement between Jessick and Murray Gardner, tax sale of Fashion Embroidery Inc., assets by the I.R.S., and the subsequent purchase of Fashion Embroidery Inc.,

assets to Fashion Group Ltd. in May of 1987 at a forced tax seizure sale.

See Exhibit 8 page 210-211 paragraph 61.

Request for Admissions Marsha Bennett:

[61]. "Even though Richard Millan was a stockholder, you did not notify Richard Millan of the Internal Revenue Service intention to seize Fashion Embroidery Inc. property during April of 1987.

[61]. Answer Marsha Bennett:
"ADMIT"

[67]. "Even though Richard Millan was a stockholder of Fashion Embroidery Inc., you never notified Richard Millan that the Internal Revenue Service had seized Fashion Embroidery Inc. property.

[67]. Answer Marsha Bennett:
"ADMIT"

SEE Exhibit 13 at page 293.

[96]. "You did not notify Richard Millan of the Internal Revenue intention to seize Fashion Embroidery Inc. property.

[96] Response Murray Gardner:
"ADMIT"

SEE Exhibit 71 Declaration of Murray Gardner:

[16] "Richard Millan was never notified after July 25, 1984 of any shareholder meeting or directors meeting of Fashion Embroidery, Inc."

SEE Exhibit 72 Declaration of Bonnie Gardner:

[11] "Richard Millan was never notified after July 25, 1984 of any shareholder meeting or directors meeting of Fashion Embroidery, Inc.

22. Richard Millan had purchased 30,000 shares of Fashion Embroidery Inc. common shares from Theda Williams in January of

1984 for \$100,000.00 and had not sold any of his shares to any person nor transferred any shares to any person.

SEE Exhibit 71 Declaration of Murray Gardner

[14] "I never purchased Richard Millan's 30,000 shares of Fashion Embroidery, Inc. stock."

[15]. "No person or entity has ever been reflected in any Fashion Embroidery, Inc. records as having purchased or been the transferee of the 30,000 shares of Fashion Embroidery, Inc. stock owned by Richard Millan."

SEE Exhibit 72 Declaration of Bonnie Gardner

[9] "I never purchased Richard Millan's 30,000 shares of Fashion Embroidery, Inc. stock."

[10] "No person or entity has ever been reflected in any Fashion Embroidery, Inc. records as having

purchased or been the transferee of the 30,000 shares of Fashion Embroidery, Inc stock owned by Richard Millan.

BUT SEE Exhibit 46 at page 437 in part: "Incorporated California Dec. 26, 1978. Authorized capital consists of 90,000 shares common stock, \$1.00 par value....."Present control succeeded Jul 1984. 66% of capital stock owned by Murray Gardner, 34% of capital stock is owned by M. Bennett.

23. Defendants Bennett and C. Steinbaugh have violated Title 18 Section 1341 (Mail Fraud) together aided and abetted by M. Gardner, B. Gardner and Fashion Embroidery Inc. The predicate acts are as follows:

1. Exhibit 23-Letter from Jack Peters to Murray Gardner 11-22-83

2. Exhibit 24-Letter from Jack Peters to Richard Steinbaugh 11-22-83

3. Exhibit 26-Letter from Eric Dean to Douglas Martin 2-24-84

4. Exhibit 30-Letter from Richard Millan to Richard Steinbaugh 12-19-83

5. Exhibit 32-Letter from William Pierce to Fashion Embroidery re: 1984 taxes 3-19-85

6. Exhibit 35-Letter sent with financial statement 3-14-85

7. Exhibit 37-Letter from Lawrence D. Frenzel to Murray Gardner 9-30-86

8. Exhibit 39-Payoff Agreement Form from Michael Jessick to the IRS re: Fashion Embroidery 3-5-86

9. Exhibit 40-Letter from IRS to Murray Gardner 4-3-87

10. Exhibit 41-Notice of seizure of Fashion Embroidery by IRS 6-2-87

11. Exhibit 42-Letter from Uday Sawhney to Murray Gardner 7-21-86

12. Exhibit 44-1984 Tax Forms

13. Exhibit 45-Fashion Embroidery
Financial Statement as of 12-31-84
14. Exhibit 46-Dun and Bradstreet
Report 10-20-86
15. Exhibit 47-1984 FUTA Tax
Return
16. Exhibit 48-1986 FUTA Tax
Return
17. Exhibit 51-Letter from Murray
Gardner to IRS with reference to Marsha
Bennett 11-12-84
18. Exhibit 52-Dun and Bradstreet
Report 5-18-82
19. Exhibit 54-1099-MISC Forms for
1984
20. Exhibit 55-Letter from William
Pierce re Fashion Embroidery re: 1984
Balance sheet
21. Exhibit 56 1984 California
Corporation Franchise Tax Return
22. Exhibit 58-CV86-7062 WDK (Gx)
Application of Internal Revenue Service

to Enter Premises to Effect Levy and
Declaration in support Thereof 10-29-86

23. Exhibit 59-CV86-7062 WDK (Gx)
Order For Entry On Premises to Effect
Levy (by IRS)

24. Exhibit 60-CV87-03057 IH
Application of Internal Revenue Service
to Enter Premises to Effect Levy and
Declaration in support Thereof 5-12-87

24. Exhibit 61 Fashion Embroidery Inc.
Check Register and Exhibit 73 marked as
defendants 4254.

1. Check for \$20,000.00 from
Jolene Runner to Richard Steinbaugh
August 26, 1983.

2. Check #015015 for
\$20,000.00 Drawn on Fashion Embroidery,
signed by Richard Steinbaugh in favor of
Murray Gardner August 26, 1983

3. Check # 587 drawn on Murray Gardner's personal account 81 in favor of Richard Steinbaugh for \$20,000.00

4. Fashion Embroidery check #15109 for \$450.00 in favor of Jolene Runner 9-15-83;

5. Fashion Embroidery check #15228 for \$450.00 in favor of Jolene Runner 10-17-83;

6. Fashion Embroidery check #15358 for \$450.00 in favor of Jolene Runner 11-8-83;

7. Fashion Embroidery check #15441 for \$450.00 in favor of Jolene Runner 12-13-83;

8. Fashion Embroidery check #15565 for \$450.00 in favor of Jolene Runner 1-13-84;

9. Fashion Embroidery check #337 for \$450.00 in favor of Jolene Runner 2-22-84;

10. Fashion Embroidery check
#492 for \$450.00 in favor of Jolene
Runner 3-11-84;

11. Fashion Embroidery check
#598 for \$450.00 in favor of Jolene
Runner 11-8-84;

12. Fashion Embroidery check
#633 for \$450.00 in favor of Jolene
Runner 9-19-84;

13. Fashion Embroidery check
#664 for \$450.00 in favor of Jolene
Runner 6-19-84;

14. Fashion Embroidery check
#664 for \$450.00 in favor of Jolene
Runner 7-16-84;

15. Fashion Embroidery check
#1061 for \$450.00 in favor of Jolene
Runner 8-16-84;

16. Fashion Embroidery check
#1164 for \$450.00 in favor of Jolene
Runner 9-11-84;

17. Fashion Embroidery check
#1241 for \$450.00 in favor of Jolene
Runner 10-9-84;

18. Fashion Embroidery check
#1348 for \$450.00 in favor of Jolene
Runner 11-7-84;

19. Fashion Embroidery check
#1441 for \$450.00 in favor of Jolene
Runner 12-10-84;

20. Fashion Embroidery check
#1538 for \$450.00 in favor of Jolene
Runner 1-4-85;

21. Fashion Embroidery check
#1669 for \$450.00 in favor of Jolene
Runner 2-6-85;

22. Fashion Embroidery check
#1762 for \$450.00 in favor of Jolene
Runner 3-11-85;

23. Fashion Embroidery check
#1882 for \$450.00 in favor of Jolene
Runner 4-10-85;

24. Fashion Embroidery check
#2020 for \$450.00 in favor of Jolene
Runner 5-21-85;

25. Fashion Embroidery check
#2125 for \$450.00 in favor of Jolene
Runner 6-21-85;

26. Fashion Embroidery check
#2197 for \$450.00 in favor of Jolene
Runner 7-22-85;

27. Fashion Embroidery check
#2352 for \$450.00 in favor of Jolene
Runner 9-12-85;

28. Fashion Embroidery check
#2419 for \$450.00 in favor of Jolene
Runner 10-3-85;

29. Fashion Embroidery check
#1028 for \$450.00 in favor of Jolene
Runner 10-25-85;

30. Fashion Embroidery check
#1120 for \$450.00 in favor of Jolene
Runner 11-13-85;

31. Fashion Embroidery check #1859 for \$900.00 in favor of Jolene Runner 4-18-86.

25. Mailgram sent by Western Union Portland office to Murray Gardner in Paramount, California as confirmation of delivery of telegram to Richard Millan in Costa Mesa, California. SEE Exhibit 6.

26. Letter sent by California Franchise Tax Board to Richard Millan regarding fraudulent 1099 tax form filed by Marsha Bennett and Uday Raj Sawhney (her husband) in August of 1988.

27. Defendants Bennett and C. Steinbaugh have violated Title 18 Section 1343 (Wire Fraud) together aided and abetted by M. Gardner, B. Gardner,

Fashion Embroidery Inc. The predicate acts are as follows:

1. Telephone call from Murray Gardner to Western Union operator in Reno, Nevada on July 23, 1984. SEE Exhibit 6.

2. Telegram sent by Marsha Bennett and Murray Gardner to Richard Millan on July 23, 1984 by interstate wires of Western Union. SEE Exhibit 6, Declaration of Paul Schmidt.

28. Defendants Bennett and C. Steinbaugh have violated Title 18 Section 152 (Bankruptcy Fraud) together aided and abetted by M. Gardner, B. Gardner, Fashion Embroidery Inc. The predicate acts are as follows:

1. Fraudulent Filing of bankruptcy petition by Richard S. Steinbaugh LA 84-08138 JD. SEE Exhibit 5 pages 73-109.

2. Fraudulent Filing of bankruptcy petition by Colleen S. Steinbaugh LA 84-19838 CA. SEE Exhibit 4 pages 33-72.

3. Violation of Title 28 U.S.C. 1746.

29. Defendants Bennett and C. Steinbaugh have violated The Securities Act of 1933 and the Securities Exchange Act of 1934 including the following provisions. Sections 10b, of the Securities Exchange Act, Rule 10b-5 and Section 17 of the Securities Act of 1933 together aided and abetted by M. Gardner, B. Gardner, Fashion Embroidery Inc.

30. Defendants Bennett and C. Steinbaugh have violated The Racketeer Influenced and Corrupt Organizations Act (Rico) Title 18 Section 1962 (d) Conspiracy to violate RICO provisions

together aided and abetted by M. Gardner, B. Gardner and Fashion Embroidery Inc.

31. Defendants in this action have said there is no continuity in this action regarding these defendants. This fraud began in early 1983 and continues to this present day. The relationship between the bankruptcy petitions and the bust-out of Fashion by these defendants is completely intertwined and the multiple predicate acts as described above only expose the most outrageous lawlessness perpetrated by these defendants on plaintiff, the State of California the United States Bankruptcy Court and the United States Internal Revenue Service.

EXCERPTS OF REPORTER'S OFFICIAL
TRANSCRIPT OF PROCEEDINGS, MONDAY, JUNE
13, 1988:

THE COURT: WE WILL SET IT FOR
TRIAL SEPTEMBER 6, AT 9:30 A.M.

MR. MILLAN: COULD I -- AS I
SAY, IS THERE SOMETHING --

THE COURT: I DIDN'T HEAR YOU.

MR. MILLAN: COULD I RESPOND
TO --

THE COURT: NO. I AM SETTING
IT FOR TRIAL DATE.

CAN'T YOU TRY IT THAT
DATE?

MR. MILLAN: NO.

THE COURT: WELL, WHY NOT?

MR. MILLAN: BECAUSE --

THE COURT: GO TO THE LECTURN,
PLEASE.

MR. MILLAN: I'M SORRY.

THE COURT: TELL ME WHY YOU
CAN'T TRY IT ON THAT DATE.

MR. MILLAN: BECAUSE ONE YEAR
AGO, I -- I -- I HAD TO GET -- I HAD TO
GET AIRLINE SEATS AND TICKETS FOR THE
SUMMER GAMES.

IT COST ME ALMOST \$18,000 AND
THE THE GAMES ARE DURING THAT MONTH,
YOUR HONOR.

THE COURT: ALL RIGHT.

WE WILL SET IT IN
OCTOBER, THEN.

THE COURT CLERK: OCTOBER 18?

(NO RESPONSE.)

THE COURT CLERK: OCTOBER 11?

YOU CAN HAVE THE 4TH OR
THE 11TH.

THE COURT: WELL, SET IT FOR
TRIAL OCTOBER 4, AT 9:30.

I WANT ONE OF YOU
GENTLEMEN TO GIVE NOTICE OF THIS AS
WELL.

MR. LUBELL: I'LL GIVE THE
NOTICE YOUR HONOR.

THE COURT: VERY WELL.

THE COURT: I'LL SIGN THE
PRETRIAL CONFERENCE ORDER AND IT'S
SUBMITTED.

EXCERPTS FROM LETTER FROM UDAY R.
SAWHNEY, CPA TO MR. MURRAY GARDNER DATED
JULY 21, 1986:

". . .

RE: Our conversation of today.

Dear Murray,

As you know I simply state things as
they are, and usually this is why I am
hired in the first place.

Today you made the remark that you did
not know what my bill was and how much I
had already been paid towards it. I
enclose as a reply my FEBRUARY statement
which apparently you never received.

I hope it answers your question
satisfactorily and emphasizes my extreme
investment of time and effort in your
firm. I believe this time to be well
worth it as I think you will in the end
pull out from your current loss

situation -(in your very own unique way).

Murray, I am available to help and as you notice I have not been quick with the bills. After-all who knows better than myself what you can or cannot pay?
(Emphasis added.)

In any case Murray I would appreciate some monthly payment for the services I have rendered to Fashion. In this case I will accept whatever you send me, as I know you to be an honest man.

If you have any questions please do not hesitate to call me. Please give my best regards to Bonnie

Murray you have my luckiest wishes.

Very truly yours,

Uday R. Sawhney, CPA"

CHRONOLOGY OF THE EFFORTS BY MILLAN TO
OBTAIN AN ORDER FROM THE DISTRICT COURT
ON THE DISQUALIFICATION OF LUBELL:

1. Petitioner Richard Millan ("Millan") filed a concurrent Motion to Recuse the Hon. William J. Rea and attorney Steven Lubell on June 13, 1988 (C.R. 62). However, the docket sheet of the District Court does not mention the motion to disqualify attorney Steven Lubell as should have been noted by the docketing clerks of the United States District Court. The facing page of plaintiff Richard Millan's Notice of Motion and Motion to Recuse the Hon. William J. Rea, Judge of the United States District Court also shows that the Motion was filed concurrently with a motion to disqualify attorney Steven Lubell. (See: Appendix H, page A-57.) The Motion to disqualify Judge Rea was

referred to the Honorable Edward Rafeedie for determination (C.R. 63).

2. On July 8, 1988, Mrs. Judy Matthews, United States District Court Clerk to the Hon. Edward Rafeedie, telephoned Millan and notified Millan that Judge Rafeedie had taken the Motions to recuse the Hon. William J. Rea and to disqualify attorney Steven Lubell off calendar and would not hear them on July 11, 1988 as had been noticed. It was further confirmed during that conversation with Mrs. Judy Matthews that Judge Rafeedie would hear both Motions on the new hearing date.

3. On July 11, 1988, Millan traveled to the United States District Court in Los Angeles to inquire of Judge Rafeedie when the new hearing date would be set.

4. On July 11, 1988, Clerk Judy Matthews told Millan, "The Court has

instructed me that the motions stand as submitted and that there will be no oral arguments on these motions permitted and you can expect a decision within ten days."

5. On or about July 21, 1988, Millan telephoned Clerk Judy Matthews to inquire if a decision had been reached on the submitted motions. Clerk Judy Matthews told Millan that no decision had as yet been made and for Millan to call back on July 26, 1988.

6. On July 26, 1988, Millan once again telephoned Clerk Judy Matthews and was told no decision had been reached as yet.

7. On July 29, 1988, Millan telephoned Clerk Judy Matthews and requested that Millan be given time to speak to Judge Rafeedie ex parte on motion day August 1, 1988.

8. Clerk Judy Matthews refused to allow Millan time to address the Court but told Millan to come into Courtroom 14 and she would try to find out for Millan when he could expect a decision from the Court.

9. Millan went into Courtroom 14 and waited. A few minutes later Clerk Judy Matthews called Millan from his seat in court and requested the case name and number. Millan wrote them down for Clerk Judy Matthews and she then went into chambers. A few minutes later Clerk Judy Matthews returned into Courtroom 14 and notified Millan that his motions had been denied and that a confirming written order would be sent out that same week.

10. On August 12, 1988, Millan had not received the promised orders and telephoned Clerk Judy Matthews. Millan

was assured the the written orders would be sent out that week.

11. On August 29, 1988, Millan had not received the written orders and again telephoned Clerk Judy Matthews. Millan was told the court had not ruled as yet.

12. On August 31, 1988, Millan received the order denying plaintiff's motion to recuse the Hon. William J. Rea. No order was received on the motion to disqualify attorney Steven Lubell.

13. On September 13, 1988, Millan telephoned Docket Clerk 3 to inquire if the Orders had been entered in the court docket. Millan was told that only the Order regarding Judge Rea was entered in the record (C.R. 73).

14. On September 13, 1988 Millan telephoned Marva Dillard, the clerk for the Hon. Judge William J. Rea, and

inquired about the Order to deny the disqualification of attorney Steven Lubell. Marva Dillard told Millan that Judge Rafeedie was to rule on that motion.

15. Millan telephoned Clerk Judy Matthews and was told that the Court had ruled on the motion to disqualify attorney Steven Lubell and that Millan's motion had been denied and entered into the record.

16. From September 14 through September 27 Millan telephoned Docket Clerk 3 and Judge Rea's Clerk eight times about the motion to disqualify attorney Steven Lubell. Each clerk said they had no information about that motion.

17. From October 18 through October 20, 1988, four more telephone calls were made by Millan to Docket Clerk 3 and to Judge Rea's Clerk. Still

no information on the motion to disqualify attorney Steven Lubell.

18. On or about October 21, 1988, Millan spoke to Miss Maggie Poppy, United States Court Docket Clerk 3. Miss Poppy told Millan that the motions in question had been misplaced. Miss Poppy asked Millan if he had conformed copies of the motions. Millan informed Miss Poppy that he did have conformed copies and that he would bring them to the Courthouse in Los Angeles. Millan then drove to the District Court in Los Angeles and provided Miss Poppy, Docket Clerk 3, with the conformed copies of the motions and all relevant material pertaining thereto. Miss Poppy told Millan that she would keep working on this issue until it was resolved.

19. On October 27, 1988 Miss Poppy informed Millan that she had spoken to Judge Rafeedie's Clerk, Judy Matthews,

and that Judy Matthews had assured her that the decision and order would be sent to Millan by the next week.

20. From October 28, 1988 through November 28, 1988, Millan telephoned Miss Poppy, Docket Clerk 3, several times and still no order was forthcoming.

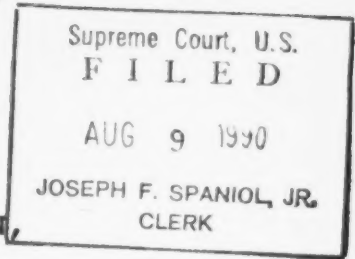
21. On or about December 5, 1988, Millan telephoned District Court Docket Clerk Maggie Poppy and was informed by Miss Poppy that she had been relieved of Docket No. 3 and was now working on another docket number and could no longer help Millan in his effort to resolve this matter.

22. The relieving of Maggie Poppy from Docket 3 effectively silenced and closed the only help Millan would get from the District Court.

(3)

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

NO. 90-155



In re RICHARD MILLAN,

Petitioner

v.

HON. WILLIAM J. REA, JUDGE
HON. EDWARD RAFEEDIE, JUDGE
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Respondents.

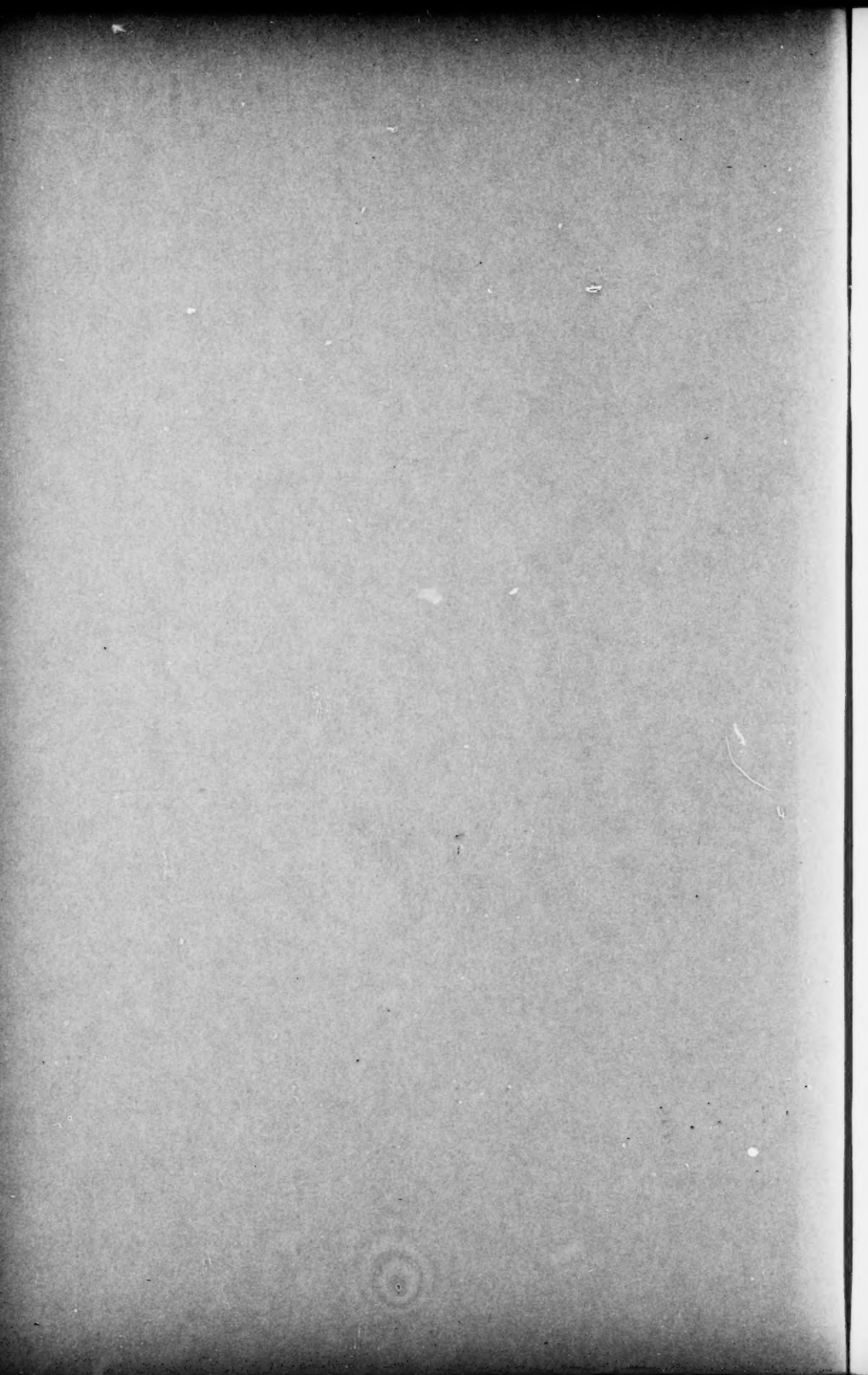
MARSHA BENNETT
COLLEEN STEINBAUGH

Real Parties in Interest

PETITION FOR A WRIT OF MANDAMUS/PROHIBITION

BRIEF OF REAL PARTIES IN INTEREST

STEVEN K. LUBELL
1234 Sixth Street
Suite 203
Santa Monica, CA 90401
(213) 451-9904
Attorney for Real
Parties in Interest



i.

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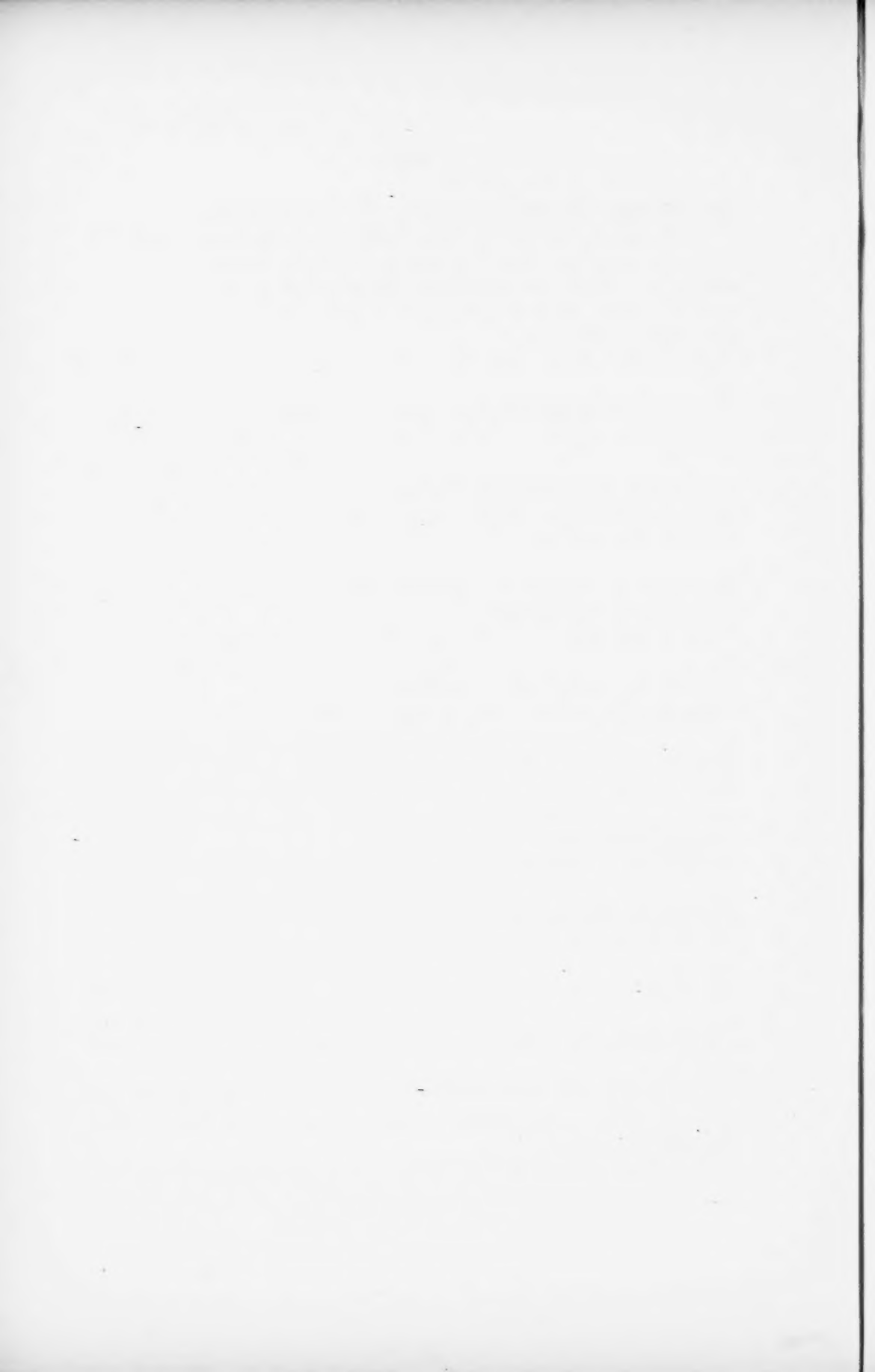
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IN THE
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NO. 90-155

In re RICHARD MILLAN,

Petitioner

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HON. WILLIAM J. REA, JUDGE
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CENTRAL DISTRICT OF CALIFORNIA

Respondents.

MARSHA BENNETT
COLLEEN STEINBAUGH

Real Parties in Interest

PETITION FOR A WRIT OF MANDAMUS/PROHIBITION

BRIEF OF REAL PARTIES IN INTEREST

OPINIONS BELOW

To Real Parties in Interest know-
ledge there are no official reports of the
following Order's of the District Court

denying Petitioner's:

1. Dismissing Appeal and Denial
of request to stay proceedings;
2. Denying Leave to Amend Complaint;
3. Denying Motion to Disqualify Judge
William J. Rea, U.S. District Court
for the Central District of
California;
4. Summary Judgment.

There are unpublished findings of fact and conclusions of law on Real Parties in Interest's motion for partial summary judgment issued by the Hon. William Rea. on December 6, 1988.

JURISDICTION

The jurisdiction of this Court is invoked under Title 28, U.S.C. § 1651.

STATEMENT OF THE CASE

The Petitioner was the husband of the Real party in Interest, Marsha Bennett and the son in law of the Real Party in Interest, Colleen Steinbaugh. The marriage, which

resulted after a brief two (2) month courtship, ended after seven (7) months. Since the demise of the marriage, Petitioner, has used certain legal knowledge pro se to harass, humiliate, and annoy Real Parties in Interest.

Petitioner filed a RICO action pursuant to 18 U.S.C. §§ 1961-1968 against Real Parties in Interest in the United States District Court for the Central District of California on April 10, 1987.

Upon learning that Real Party in Interest, Marsha Bennett remarried, Petitioner, moved to amend his RICO complaint to include as an additional party Uday Sawhney, the new husband of Real Party in Interest, Marsha Bennett. On April 19, 1988, Petitioner's motion to amend the RICO complaint was denied by the Hon. William J. Rea, United States District Judge. Thereafter, Petitioner filed a motion to recuse the Hon. William J. Rea, District

Court Judge and disqualify Steven K. Lubell the attorney of record for Real Parties in Interest. On August 26, 1988, the Hon. Edward Rafeedie, United States District Court Judge denied Petitioner's motion to recuse the Hon. William J. Rea, United States District Judge. Real Parties in Interest knows of no order regarding the disqualification of the attorney of record for Real Parties in Interest.

On November 8, 1988, Petitioner filed a Notice of Appeal to the United States Court of Appeals for the Ninth Circuit seeking an appeal from an order from the Hon. Edward Rafeedie, Judge of the United States District Court for the Central District of California denying Petitioner's motion to recuse the Hon. William J. Rea, Judge of the United States District Court for the Central District of California.

On December 19, 1988 the United States Court of Appeals for the Ninth Circuit

ordered that the order appealed from does not appear to be a final order because it did not dispose of all claims as to all parties. Petitioner was ordered to voluntarily dismiss the appeal.

On April 11, 1989 an Order to Show Cause was issued by the United States Court of Appeals for the Ninth Circuit on the basis that there had been no voluntary dismissal of the appeal.

On March 9, 1990 an Order was entered from the United States Court of Appeals for the Ninth Circuit dismissing the appeal for failure to comply with rules requiring processing the appeal to a hearing.

Petitioner has not perfected any Petition for a Writ of Mandamus/Prohibition to the United States Court of Appeals for the Ninth Circuit prior to the filing of the instant petition for a Writ of Mandamus/Prohibition.

SUMMARY OF ARGUMENT

Federal laws provide for the orderly administration of justice.

Petitioner desires to circumvent adverse rulings made by the District Court Judge by attempting to recuse the District Court Judge.

Petitioner has not raised any factual basis to support a legal finding of bias or prejudice of the District Court Judge.

Mandamus is not a proper remedy concerning decisions by the District Court Judge pertaining to amendments of pleadings and partial summary judgment.

Petitioner is attempting to discredit the Attorney of Record for Real Parties in Interest solely as a tactical advantage to Petitioner in this litigation.

ARGUMENT

I.

THE ISSUANCE BY THE COURT OF ANY
EXTRAORDINARY WRIT IS NOT A MATTER OF RIGHT,
BUT OF DISCRETION SPARINGLY EXERCISED.

Rules of the U.S. Supreme Court Rule 20
provides as follows:

"The issuance by the Court of any extraordinary writ authorized by 28 U.S.C. § 1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any writ under that provision, it must be shown that the writ will be in aid of the Court's appellate jurisdiction, that there are present exceptional circumstances warranting the exercise of the Court's discretionary powers, and that adequate relief cannot be had in any other form or from any other court."

Real Parties in Interest submit that the Petitioner has failed to indicate how the issuance of a writ of mandamus/prohibition as requested by Petitioner will aid in this Court's appellate jurisdiction. There must be an indication to this Court of how the issuance of the extraordinary writ will aid

in this Court's appellate jurisdiction before the Court can determine if an extraordinary writ may issue.

The circumstances alleged by Petitioner are not extraordinary circumstances warranting the exercise of this Court's discretionary powers. Rather, the circumstances alleged are part of a tactic by Petitioner to harass and circumvent the orderly administration of justice.

Prior to filing the instant petition for an extraordinary writ the Petitioner has not sought a similar remedy in the U.S. Court of Appeals. Adequate relief should properly first be attempted to a lower court in which there is a similar remedy before requesting an extraordinary writ from the Supreme Court.

II.

WHILE A LITIGANT APPEARING IN PROPRIA PERSONA IS ENTITLED TO THE SAME CONSTITUTIONAL PROTECTION AFFORDED TO LITIGANTS REPRESENTED BY COUNSEL, THE COURT HAS AN OBLIGATION TO PROTECT AND PRESERVE THE SOUND AND ORDERLY ADMINISTRATION OF JUSTICE.

The problem facing the Court--that of a pro se litigant flooding the court with meritless, fanciful claims is by no means new to the federal court system. The burden on the system when faced with just one litigant who has a fanatical desire to flood the courts has been noted. Urban v. United States 768 F.2d 1497 (D.C. 1985).

It is axiomatic that no petitioner or person shall ever be denied his right to the processes of the court. In Re Carl Clovis Green, 598 F.2d 1126, 1127 (8th Cir. 1979) (en banc). The right of process to the court is a basic constitutional right guaranteed to all. See., Article I Amend. 1.

Yet, it is also well settled that a court may employ remedies to protect the integrity of the courts and the orderly and expeditious administration of justice. See, e.g., In Re Martin-Trigona, 737 F.2d 1254, 1261 (2d Cir. 1984) (affirming in part district court order granting an injunction against vexatious pro se litigant); In Re Green, 669 F.2d 779, 787 (D.C.Cir.1981) (ordering district court to enjoin pro se litigant from filing suit without leave of the court); Ruderer v. United States, 462 F.2d 897, 899 (8th Cir.), cert. denied, 409 U.S. 1031, 93 S. Ct. 540 (enjoining pro se litigant from filing further suits relating to discharge from army).

In this case what the District Court has done is balance Petitioner's right to present a claim with the District Court's right to prevent a vexatious litigant. While the result is a discontented litigant, the court system has worked as it is intended to by

causing the orderly administration of justice which is also designed in part to prevent frivolous lawsuits.

Petitioner asserts that because he is pro se he should not be held to as high a standard as if represented by counsel. The opportunity to appear pro se, however, is not a license to submit material that a pro se petitioner knows is irrelevant and insulting. Taylor v. Commissioner of Internal Revenue, 771 F.2d 480 (11th Cir. 1985).

The court has an obligation to protect and preserve the sound and orderly administration of justice. In Re Martin-Trigona, 737 F.2d 1254, 1262 (2d Cir. 1984). By refusing to allow Petitioner to amend his complaint the District Court, while being extremely solicitous to Petitioner, adhered to their obligation and in fact has properly protected and preserved the sound and orderly administration of justice.

III.

PETITIONER'S BASIS TO RECUSE THE DISTRICT COURT JUDGE IS NOT BASED UPON A FACTUAL BASIS NECESSARY TO ESTABLISH PERSONAL BIAS OR PREJUDICE.

The basis for disqualification of a trial judge of a United States Court is that "personal bias or prejudice" exists, by reason of which the judge is unable to impartially exercise his functions in the particular cases. 28 U.S.C. § 144.

It is a provision obviously not applicable save in those rare instances in which the affiant is able to state facts which tend to show not merely adverse rulings already made, which may be right or wrong, but facts and reasons which tend to show personal bias or prejudice. It was never intended to enable a discontented litigant to oust a judge because of adverse rulings made, for such rulings are reviewable otherwise, but to prevent his future action in a pending

case. The writ of mandamus will be granted by the Supreme Court only when it is clear and indisputable that there is no other legal remedy. Ex Parte Am. Steel Barrel Co. (1913) 230 U.S. 35, 33 S. Ct. 1007.

Here, Petitioner is attempting to utilize the writ of mandamus procedure because petitioner is discontented that the District Court Judge has properly refused to allow Petitioner leave to amend his complaint and because the District Court Judge granted real parties in interest motion for partial summary judgment.

Petitioner asserts as the basis for the writ of mandamus to recuse the District Court Judge the alleged facts that Petitioner contends establishes the personal bias or prejudice of the Hon. William J. Rea is that: (1) a Law Clerk identified by Petitioner only as "Harry" had an ex-parte conversation with Real Parties in Interest's attorney of record regarding the re-scheduling of a hearing on

Real Parties in Interest motion for summary judgment and Petitioner's cross-motion for summary judgment; and, (2) that the hearing on the motions for summary judgment were changed from the morning calendar to the afternoon calendar at which time Petitioner alleges security personnel watched every move Petitioner made causing Petitioner to be intimidated.

To claim bias without more is insufficient. The facts and the reasons for the belief that such bias or prejudice exists must be set out. Petitioner has failed to set out plainly how the re-scheduling of the motion has biased him. Whether a judge is disqualified depends not upon mere facts that prejudice has been charged, but upon the facts which are alleged tend to show such prejudice.

Assuming, arguendo, that security personnel watched every move Petitioner made how does that show prejudice to Petitioner?

||

Does that not only show the court's regard for the orderly administration of justice.

With respect to the changing of the hearing time on the motions for summary judgment, one would think that the change of time for the hearing on the summary judgment motions were for the orderly administration of justice in that it gave the Petitioner the ability to argue his case without concern, with the time limitations often imposed upon litigants during the District Court's regular motion calendar.

Petitioner has taken what appears to be the Court's solicitousness to Petitioner and turned it around to allege that the Court is biased and prejudiced to Petitioner.

The remedy of mandamus is a drastic one, to be invoked only in extraordinary circumstances. Kerr v. United States District Court for the Northern District of California 426 U.S. 394, 96 S. Ct. 2119 (1976).

Petitioner has the burden of showing that

his right to issuance of the writ is clear and indisputable. Bankers Life & Cas. Co. v. Holland, 346 U.S. 379, 74 S. Ct. 145 (1953). Clearly, under these circumstances petitioner has not established such extraordinary circumstances as to warrant the requested petition for mandamus/prohibition.

IV.

MANDAMUS IS NOT PROPER TO CORRECT AN ALLEGED ERROR REGARDING THE REFUSAL TO ALLOW AN AMENDMENT TO A PLEADING.

A writ of mandamus is not proper to correct an alleged error by a district judge in refusing to allow an amendment to a pleading. Ex-Parte Martha Bradstreet 32 U.S. 634 (1 Pet. 1833). To allow such a remedy would be a method to control or coerce the discretion of a subordinate tribunal. Permitting amendments is a matter of discretion that must be preserved to the lower court.

The District Court Judge made a decision to deny Petitioner the right to file an amended complaint. Petitioner responded to the denial with a motion to recuse the District Court Judge without setting forth facts establishing bias or prejudice to Petitioner. Petitioner is attempting to circumvent the decisions of the District Court Judge with the filing of this petition.

V.

AN ORDER REFUSING TO GRANT A MOTION FOR SUMMARY JUDGMENT DOES NOT SATISFY THE EXTRAORDINARY CIRCUMSTANCES TEST FOR ISSUANCE OF A PREROGATIVE WRIT.

The District Court denied Petitioner's motion for summary judgment and granted partial summary judgment to Real Parties in Interest.

It is completely clear that an order refusing to grant a motion for summary judgment is not a final decision under

Section 1291 of the Judicial Code, 28 U.S.C. § 1291. See Chappell & Co. v. Frankel 367 F.2d 197 (2nd Cir. 1966); Doehlter Metal Furniture Co. v. Williams, 149 F.2d 130, 135 (2nd Cir. 1945). The judgment of partial summary judgment is not reviewable as a final judgment under 28 U.S.C. § 1291. Chacon v. Babcock, 640 F.2d 221, 222 (9th Cir. 1981). It is almost equally clear that the Court ought not review a lower court's denial of a summary judgment motion by means of a prerogative writ pursuant to the All Writs Statute. 28 U.S.C. § 1651(a). Traditionally, the prerogative writs have been reserved for extraordinary circumstances. In re Josephson, 218 F.2d 174 (1 Cir. 1954).

A garden variety denial of a summary judgment motion can hardly satisfy the extraordinary circumstance test necessary before a writ may issue. Chappell & Co. v. Frankel 367 F.2d 197 (2nd Cir. 1966).

MANDAMUS IS NOT PROPER TO SEEK
DISQUALIFICATION OF AN ATTORNEY WHEN
PETITIONER'S MOTIVATION IS TO ANNOY AND
HARRASS.

Petitioner seeks to disqualify Real Parties in Interest's attorney on the basis that he allegedly suppressed evidence in discovery. However, Petitioner never moved the District Court to compel responses to discovery that Petitioner now at this juncture finds lacking. Instead, Petitioner now attempts an insulting attack on Real Parties in Interest's attorney of record. It is clear that Petitioner moved to disqualify Real Parties in Interest Attorney of Record and recuse the District Court Judge in response to a denial by the District Court of Petitioner's motion for leave to amend his complaint. If there was no attempt by Petitioner to compel discovery and remedy any alleged wrongdoing at the District Court level, then clearly the petition for mandamus

does not show an usurpation by the District Court that warrants the extraordinary remedy of a writ of mandamus. See., Kerr v. United States District Court for the Northern District of California 426 U.S. 394, 96 S. Ct. 2119 (1976). In exceptional circumstances for which it was designed, a writ of mandamus from the court of appeals might be available to an attorney who is disqualified or to a litigant when a motion for disqualification is denied. See., Richardson-Merrell, Inc. v. Koller 472 U.S. 424, 105 S. Ct. 2757 (1985). However, regardless of the ultimate decision of the District Court with respect to disqualification of Real Parties in Interest's Attorney of Record, this is not the exceptional circumstance for which a writ of mandamus was designed.

The Court has previously recognized the tactical use of disqualification motions to harass opposing counsel. The District Court

Judge has primary responsibility to police the prejudgment tactics of litigants, and the district judge can better exercise that responsibility if the appellate courts do not repeatedly intervene to second-guess prejudgment rulings. Richardson-Merrell, Inc. v. Koller 472 U.S. 424, 436, 105 S. Ct. 2757 (1985). It is widely understood by judges that attorneys now commonly use disqualification motions for purely strategic purposes. Woods v. Covington Cty. Bank (5th Cir. 1976) 537 F.2d 1288, 1289.

Real Parties in Interest respectfully and adamantly submit that Petitioner's attempts to disqualify their Attorney of Record is solely designed to harass and circumvent the decisions of the District Court.

CONCLUSION

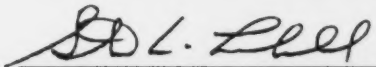
While there must be a civility between litigants there must also be a balancing determination by the court as to what is

proper and what is intended merely to circumvent the orderly administration of justice.

On this basis, the Court is respectfully requested to deny Petitioner's request for a writ of mandamus/prohibition.

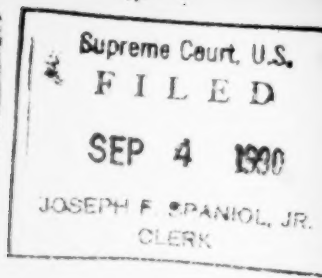
Dated this 8th day of August, 1990.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "S.K. Lubell", is written over a horizontal line.

STEVEN K. LUBELL
Attorney for Real Parties
in Interest
MARSHA BENNETT &
COLLEEN STEINBAUGH

No. 90-155



In the Supreme Court
OF THE
United States

OCTOBER TERM, 1989

In re RICHARD MILLAN, Petitioner

PETITION FOR A WRIT OF MANDAMUS/
PROHIBITION TO THE UNITED STATES
DISTRICT COURT FOR THE CENTRAL DISTRICT
OF CALIFORNIA,
AND THE HONORABLE EDWARD RAFEEDIE, AND
THE HONORABLE WILLIAM J. REA, JUDGE OF
THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

PETITIONER'S REPLY BRIEF

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No. 90-155

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PETITIONER'S REPLY BRIEF

PETITIONER'S RESPONSE TO RESPONDENTS'
JURISDICTIONAL ARGUMENT

This extraordinary case, which has no parallel in American jurisprudence, contains such massive extraordinary misconduct that this petitioner ("Millan") can find no precedent even coming close in any recorded federal case.

This is a case that is a massive wrong not only against this single litigant, but a massive wrong against the American people, its laws and the institutions of justice that were set in place by the founding fathers to protect each and every citizen.

Swift action on this case by the United States Supreme Court will send a loud and clear message to the Bench and Bar, that the wrongs brought to the attention of this Court by Millan will not be tolerated and that any person

proceeding Pro Se within the Federal Courts will be protected by law.

The actions of Respondent Marsha Bennett ("Bennett") and her attorney Stephen Lubell ("Lubell") and their massive misconduct (Petitioner's Brief for Writ of Mandamus ("Pet. Brief") at pages 13-20) are exactly the type of case that begs for Supreme Court intercession under the "Supervisory" role of this Court.

The jurisdiction of the United States Supreme Court in this type of case is well-settled law. There is no other means than by the Writ of Mandamus to force the trial judge to do his duty. In this instant action Millan filed a motion to disqualify counsel in June 13, 1988 and as of this date of September 1, 1990, the District Court has refused to rule on that duly filed motion and has in fact kept Millan from

perfecting his appeal to the Ninth Circuit Court of Appeals by employing the means and methods described by Millan in his Appendix to Writ of Mandamus (Appendix FF, pages A-235 through A-242) filed with this Court.

Millan, in his Petition for a Writ of Mandamus, has also brought the attention of this Court to the actions of the District Court, its clerks and its decisions that also all beg for Supreme Court intercession under the supervisory role of this Court.

RESPONDENTS' OPPOSITION BRIEF ATTACKS THE JURISDICTION OF THE SUPREME COURT

1. "Real Parties in Interest submit that the Petitioner has failed to indicate how the issuance of a writ of mandamus/prohibition as requested by Petitioner will aid in this Court's appellate jurisdiction. There must be an indication to this Court of how the issuance of the extraordinary writ will aid in this Court's appellate jurisdiction before the Court can determine if

an extraordinary writ may issue."
(Respondents' Brief at pages 7-8).

Millan contends to this Court that the actions of the District Court in using events that did not happen within this case as a partial basis for its decision to give respondents in this case a partial summary judgement (Pet. Brief at pages 44-47) place a cloud over the motives of the District Court in this case. If in fact respondents were entitled to a partial summary judgement, why was it necessary for the District Court to include in its opinion reliance upon events that did not happen.

Mr. Lubell in his Reply Brief does not deny the above allegations nor does he offer any facts or proof that the District Court's order is correct. Mr. Lubell has a complete intimate knowledge of this case and yet he was content to accept a District Court

decision that quoted incorrect facts and events that he knew to be incorrect.

Millan does not know who in the Court's Chambers wrote that opinion; however, Millan believes that the law clerk "Harry" was instrumental in that decision as he was in the District Court's Order to deny Millan leave to file his first amended complaint. The law clerk "Harry" was also a participant with Lubell in the ex parte conversation (Pet. App. to Writ at pages A-85-A-100) during the period of time that the Court, Harry, Lubell and other defense counsel knew Millan would be out of the country (Pet. App. to Writ at pages A-229-A-231) and concealed the ex parte conversation from Millan. Millan further believes that Harry and Lubell were also instrumental in placing the security guards around Millan during the

hearings cited in his brief (Pet. Brief at pages 43-44).

It is clear, by using events that did not happen in its decisions, the District Court precludes the Supreme Court from its appellate role because in order to disprove this allegation on appeal, it would be necessary for the Supreme Court to go over every document, hearing and motion in this case to prove or disprove Millan's most serious allegations (Pet. Brief pps 44-47).

Mr. Lubell has not argued against these allegations. It would stand to reason that if Millan was not correct in his allegations of this extraordinary conduct by the District Court, Lubell would have done all in his power to bring the evidence, documents or transcripts to this Court's attention.

Millan submits to this Court that the respondents' actions (Pet. Brief

pages 13 through 19), if sustained, will preclude the Supreme Court from its appellate jurisdiction because there will be no case to appeal. Such is the massive nature of their misconduct.

Millan further submits that the Writ of Mandamus is well within the Supreme Court's supervisory powers over the District Courts and the Bar practicing before the Federal Court Bench. The Supreme Court spoke of this in Firestone Tire & Rubber Co. V. Risjord 1981, 101 S.Ct. 669, 676 n. 13, 449 U.S. 368, 66 L.Ed.2d 571, when it ruled that a collateral order appeal cannot be taken from a decision refusing to disqualify counsel. The Supreme Court suggested "in the exceptional circumstances for which it was designed, a writ of mandamus *** might be available."

The Ninth Circuit Court of Appeals ruled that mandamus procedure was held

appropriate to review denial of a motion to disqualify opposing counsel in Sewerage Agency v. Jelco Inc., C.A. 9th, 1981, 646 F.2d 1339, 1343-1344.

"The court found there was no adequate alternative means of relief, that irremediable damage might result, that there was a risk of injury to the public perception of the legal profession, and that the proceeding presented a question of law that had not been addressed by the circuit court of appeals. (after undertaking review, the 9th C.A. also reviewed the question whether there was an abuse of discretion; in the end, mandamus was denied.)"

Millan further submits to this Court that the actions of the District Court did, in fact, usurp the powers and authority granted to the Congress to make the laws of this nation under the Constitution. The District Court did this by creating its own laws when it ordered Millan to take his complaints of attorney misconduct to the "State Bar", on May 9, 1988 in the following manner:

Mr. Millan: "I have in many, many motions in front of this court asked this court to investigate the misconduct of Mr. Steven Lubell. Not only in---"

The Court: "You are going to have to take that to the State Bar. This court is not here to investigate attorneys in the way they practice law." (App. R pg. A-107 Pet. for Writ of Mandamus).

This usurpation of power by the District Court was with a total lack of legal foundation or authority and Millan can find no case where a District Court was ever granted the authority to give jurisdiction of any portion of a federal case before that court to a nonjudicial body or entity. By its action, the District Court completely nullified F.R.C.P. Rule 11 for Millan and allowed attorney Stephen Lubell to proceed with his massive misconduct in this case.

The District Court has a total and complete knowledge of the inherent powers of the court and a highly

technical knowledge of F.R.C.P. Rule 11. In August of 1987, in an eloquent written opinion in Mercury Service, Inc. v. Allied Bank of Texas, 117 F.R.D. 147, 156 (1987) (Pet. "App J" at pages A-62-A-82), the District Court discussed, among other things, the "mandatory" nature of Rule 11 (Id. at A-16 [10]), the "punitive" nature of Rule 11 (Id. at pages A-20 through A-74), and the use of Rule 11 to punish attorney misconduct,

"Use of Rule 11 against "the unscrupulous lawyer knowingly deceiving the court are appropriate." (Id. at A-74.)

The District Court further discussed inherent powers in the following manner:

"In addition to their authority under Rule 11, the Federal Courts have authority to impose sanctions under their "inherent powers" which are necessary to exercise all the others." (Id. at A-74.)

There can be no clearer double standard of justice than a district court that denies a party in Pro Se the full and complete protection of the law as it is written on the one hand and on the other writes an eloquent opinion that expressly states all of his mandatory obligations under the law and his duty to use that law to its full extent and meaning in a similar situation.

In the examination of the District Court's order for Millan to take his complaints to the "State Bar", it would only be fair for this Court to examine the nature of the quagmire into which the District Court ordered Millan.

During the period of on or about 1985-1986 the California Legislature rewrote the "Bar" disciplinary system to take care of an estimated 20,000 complaints per year against members of the State Bar of California. The law

included the imposition of a State Bar Discipline Monitor to oversee the changes in the law that the California Legislature felt were needed to protect the citizens of the State of California. (App.HH Pet. Reply Brief at page A-5.)

The district court ordered Millan to take his complaints to the State Bar on May 9, 1988.

On June 22, 1988 as reported by the State Bar Monitor there were 7,774 open inquiry cases pending against California State Bar Members (See App.II to Pet. Reply Brief at page A-6).

Had Millan taken his complaints to the State Bar of California in May of 1988 as ordered by the District Court, Millan would have been faced with a backlog of cases that would have extended any hearing afforded Millan beyond the year 1995. (App.JJ to Pet. Reply

Brief at page A-7). The trial date was set for October 1988.

The District Court's extraordinary order would have forced Millan into trying a case in district court in the face of massive misconduct by defendants in this case.

The District Court further usurped the power of the court rules when it repeatedly ignored Millan's request for the District Court to invoke Local Rule 2.6.4 (Pet. App. "S" to Brief for Writ of Mandamus, pages A-109-A-110).

2. "The Circumstances alleged by petitioner are not extraordinary circumstances warranting the exercise of this Court's discretionary powers. Rather the circumstances alleged are part of a tactic by Petitioner to harass and circumvent the orderly administration of justice." (Resp. Brief at page 8.)

Millan cannot disagree more with Lubell's statement above. Millan does

not believe that the circumstances in this case are the norm. If this Court reads the above as Millan has read it, it would assume that normal procedure for the bench and bar to follow would be that the misconduct related in this case is all part of doing business and that the rules of court are only there to be circumvented. Mr. Lubell, by the above statement and his complete lack of defense to the allegations in this Writ of Mandamus, does a great injustice to the bench and bar of this nation.

3. "Prior to filing the instant petition for an extraordinary writ the Petitioner has not sought a similar remedy in the U.S. Court of Appeals. Adequate relief should properly first be attempted to a lower court in which there is a similar remedy before requesting an extraordinary writ from the Supreme Court." (Resp. Brief at page 8.)

Millan has attempted two appeals to the Ninth Circuit Court of Appeals, the first one ended with the Court stating

that no final judgment had been rendered in the case. The second ended when Millan could not perfect his appeal because of the actions of the District Court as Millan has related herein.

The Ninth Circuit could have converted those appeals into a Writ of Mandamus yet chose not to do so. (App. to Reply Brief "GG" at page A-1-A-4.)

CLAIMS OF HARASSMENT

"The Petitioner was the husband of the Real party in Interest, Marsha Bennett and the son in law of the Real Party in Interest, Colleen Steinbaugh. The marriage, which resulted after a brief two (2) month courtship, ended after seven (7) months. Since the demise of the marriage, Petitioner, has used certain legal knowledge pro se to harass, humiliate, and annoy Real Parties in interest." (Brief of RPI at pages 2-3.)

There is nothing more in Respondents' Brief. There is no example of facts provided of how Millan has harassed these respondents. There are no

examples or facts provided of how Millan has humiliated these respondents. There are no examples or facts provided as to how Millan has annoyed these respondents. Finally, there are no examples or facts provided as to how Millan has used "certain legal knowledge pro se," in some illegal fashion.

Respondents offer a novel defense to Millan's allegations of misconduct in that somehow Millan's marriage at one point to one of the respondents for some six months constitutes harassment and authority for Lubell and Bennett to circumvent the Federal Rules of Civil Procedure, the Rules of Court, the Rules of Professional Conduct, the ABA Model Rules, the State of California Penal Code § 653F(a), and the California Business and Professions Code § 6068(d). Further, somehow the fact of the six-month marriage allows respondents to

suppress evidence, commit perjury, suborn perjury, conceal documents, witnesses, and material facts, misrepresent prior court proceedings, misrepresent cited authority, harass the opposing party and have ex parte contact with the Court without revealing that contact to the opposing party.

However, Mr. Lubell has neglected to inform the Supreme Court that Marsha Bennett had instituted a law suit against Millan in Superior Court for the State of California. That suit alleged breach of contract and fraud and was served on Millan at the United States Courthouse in Los Angeles on or about December 4, 1984 in an effort to prevent Millan from notifying the Bankruptcy Court that Respondent Colleen Steinbaugh was committing a fraud on that court.

Mr. Lubell has also neglected to inform the Supreme Court that Bennett in

the Divorce settlement of Millan v. Millan specifically had a clause inserted into the final judgement order that she intended to pursue the State Court litigation (CR: 62, p. 38 "L") and thus continue the litigation between the parties.

Mr. Lubell also neglected to inform the Supreme Court that Marsha Bennett and Colleen Steinbaugh failed to appear for depositions and to produce subpoenaed documents in that case on July 23, 1987 and on January 31, 1990. The Superior Court, on a motion from Millan, dismissed Bennett's suit against Millan with prejudice.

Mr. Lubell further did not inform the Court that he was the attorney for Bennett in the state case. (CR: _____, Plaintiff's Response to Order to Show Cause, May 22, 1990, pp. 24-29.)

Conclusion

Millan has provided the Supreme Court with the facts, documents and evidence in this case. There has been no rebuttal, evidence, documents or legal argument provided by respondents to this Court that would disprove any allegation or contention made by Millan against these respondents.

Respondents have provided the Court with a very clear example of how even at this late date, they have attempted to mislead and misrepresent proceedings to the courts involved in this case.

"Upon learning that real party in interest, Marsha Bennett remarried, petitioner, moved to amend his RICO complaint to include as an additional party Uday Sawhney, the new husband of Real Party in Interest, Marsha Bennett...."
(Opposition Brief at pg. 3)

Millan filed his motion for leave to amend his complaint on March 13,

1988. The court record will show that on July 24, 1987 Millan first learned of the remarriage of Bennett. For seven full months thereafter Lubell and Bennett concealed the identity of Uday Raj Sawhney from Millan. (App.KK to Pet. Reply Brief at page A-8.)

Millan contends that this Court has the complete jurisdiction and responsibility for awarding Millan each and every Order that Millan has prayed for in his Petition for a Writ Mandamus filed with this Honorable Court.

Respectfully submitted,

This date of September 2, 1990.



RICHARD MILLAN
COUNSEL OF RECORD
In Propria Persona

No. 90-155

**In the Supreme Court
OF THE
United States**

OCTOBER TERM, 1989

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**APPENDIX TO
PETITIONER'S REPLY BRIEF**

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In propria Persona

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

RICHARD MILLAN	)	Civil Action No.
Plaintiff	)	87-2283 WJR
v)	
MARSHA BENNETT,	)	NOTICE OF APPEAL
Et al, Defendants	)	TO THE NINTH CIRCUIT
	)	COURT OF APPEALS

NOTICE OF APPEAL

TO THE HON. WILLIAM J. REA, JUDGE,
UNITED STATES DISTRICT COURT.
TO THE HON. EDWARD RAFEEDIE, JUDGE,
UNITED STATES DISTRICT COURT.
TO DEFENDANTS MARSHA BENNETT, COLLEEN
STEINBAUGH AND THEIR ATTORNEY OF RECORD
STEVEN LUBELL.

NOTICE is hereby given that Plain-
tiff RICHARD MILLAN hereby appeals to
the United States Court of Appeals for
the Ninth Circuit from the following
District Court Orders.

1. Plaintiff applies for a Writ of Mandamus/Prohibition Re: Order denying leave to file amended complaint entered in this action on April 21, 1988.

2. Plaintiff applies for a Writ of Mandamus/Prohibition Re: Order denying recusal of the Hon. William J. Rea entered in this action on August 26, 1988.

3. Plaintiff applies for a Writ of Mandamus/Prohibition Re: Order denying disqualification of Attorney Steven Lubell entered in this action.

4. Plaintiff appeals from an order granting summary judgement to defendants Marsha Bennett and Colleen Steinbaugh on counts 5, 6 and 7 of the complaint pursuant to Minute Order entered in this action on October 17, 1988.

Pursuant to United States District Court for the Central District of California Local Rule 17.1(a) Plaintiff files the following names of all parties to the judgement or order; and (b) the names and addresses of the attorneys for each party and furnishes the clerk of the District Court sufficient copies of this notice of appeal to permit prompt compliance with the service requirements of F.P. App. P. 3(d).

PLAINTIFF: RICHARD MILLAN
3941 SO. BRISTOL STREET
SUITE B-338
SANTA ANA, CALIFORNIA 92704-7429

V.

THE HON. WILLIAM J. REA, JUDGE
UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
OFFICE OF THE CLERK
UNITED STATES COURTHOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012

THE HON. EDWARD RAFEEDIE, JUDGE
UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
OFFICE OF THE CLERK
UNITED STATES COURTHOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012

DEFENDANTS: MARSHA BENNETT AND COLLEEN
STEINBAUGH AND THEIR COUNSEL OF RECORD:
STEVEN K. LUBELL
1234 SIXTH STREET, SUITE 203
SANTA MONICA, CALIFORNIA 90401
(213) 451-9904

DATED NOVEMBER 8, 1988

RICHARD MILLAN

IN PROPRIA PERSONA

Excerpts from the Third Progress Report of the State Bar Discipline Monitor by Robert C. Fellmuth, State Bar Discipline Monitor, Sept. 1, 1988, at page 8:

"CB 1543 (Presley) requires the State Bar Discipline Monitor to make an Initial Report on June 1, 1987, and subsequent written and oral reports to the Senate and Assembly Judiciary Committees every five months thereafter (Business and Professions Code Section 6086.9). A First Progress Report was issued in November 1987; and a Second Progress Report was released in April 1988. These reports were presented to the Supreme Court, the Legislature, and the public as required by law".

Excerpts from the Third Progress Report of the State Bar Discipline Monitor by Robert C. Fellmuth, State Bar Discipline Monitor, Sept. 1, 1988, at page 16:

"What should cause more than a little concern for all of us working with the discipline system is the number of cases in this somewhat amorphous category--all of them hidden from current backlog status by their pre-complaint designation. As of June 22, 1988, 7,774 open inquiry cases were pending in the Intake unit...."

Third Progress Report of the State Bar Discipline Monitor by Robert C. Fellmuth State Bar Discipline Monitor Sept. 1, 1988, at page 16.

Excerpts from the Third Progress Report of the State Bar Discipline Monitor by Robert C. Fellmuth, State Bar Discipline Monitor, Sept. 1, 1988, Exhibit A-6 and Exhibit A-8:

June 1988 Complaint Disposition Summary.

"CLOSED	285
TERMINATED	78
ADMONITION	6
NOTICE	29
TOTAL	<u>398</u>

AGE OF COMPLAINTS PENDING AND COMPARISON.

" JUNE 1987	JUNE 1988
0-6 MONTHS 2560	0-6 MONTHS 1762
7-9 MONTHS 838	7-9 MONTHS 1043
10-12 MONTHS 497	10-12 MONTHS 452
13-21 MONTHS 776	13-21 MONTHS 663
21+ MONTHS 413	21+ MONTHS 538"

Third Progress Report of the State Bar Discipline Monitor by Robert C. Fellmuth State Bar Discipline Monitor Sept. 1, 1988, Exhibit A-6. and Exhibit A-8

EXCERPTS OF COURT RECORD 33, AT PAGE 6,
PARAGRAPH 15, FILED WITH THE DISTRICT
COURT ON MARCH 14, 1988:

"15. On July 24, 1987, at 3:45 P.M. Plaintiff telephoned Mr. Scott Gilmore, the attorney for R. STEINBAUGH, M. GARDNER, B. GARDNER, AND FASHION EMBROIDERY INC. During the conversation Mr. Scott Gilmore informed Plaintiff that Mr. Steven Lubell, the atty for COLLEEN STEINBAUGH, would be the attorney for MARSHA BENNETT when we served her. Mr. Gilmore related a conversation he had with a man who identified himself as the husband of MARSHA BENNETT. This husband of MARSHA BENNETT angrily instructed Mr. Gilmore not to speak to Plaintiff or communicate with Plaintiff in any way. Mr. Gilmore then told the "husband of MARSHA BENNETT not to tell him how to practice law."